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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 PATRICK MARANDA and
18 ROBERT EWING, individually, and
on behalf of a class of similarly
19 situated individuals,

20 Plaintiffs,

21 v.

22 HYUNDAI MOTOR AMERICA.,
INC., a California corporation, KIA
23 MOTORS AMERICA, INC., a
California corporation, HYUNDAI
24 MOTOR COMPANY, a South
Korean corporation, and KIA
25 MOTORS CORPORATION, a South
Korean corporation,

26 Defendants.
27
28

Case No.:

**CLASS ACTION COMPLAINT
FOR:**

- (1) Violations of the Minnesota Prevention of Consumer Fraud Act
- (2) Violations of the Minnesota Deceptive Trade Practices Act
- (3) Violations of the Minnesota False Statement in Advertising Act
- (4) Breach of Express Warranty under Minnesota Law
- (5) Breach of Implied Warranty under Minnesota law
- (6) Violations of the South Carolina Unfair Trade Practices Act
- (7) Breach of Express Warranty under South Carolina Law
- (8) Breach of Implied Warranty under South Carolina Law

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- (9) Breach of Express Warranty under the Magnuson-Moss Warranty Act
- (10) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (11) Fraudulent Concealment/Omission
- (12) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 6. The Headlight Defect presents a significant safety hazard. Drivers,
2 including Plaintiffs Maranda and Ewing, are unable to see at a distance in front of
3 them, are unable to see in inclement weather and while driving at night, and are
4 unable to see potential road hazards, including people, animals, and objects. The
5 Headlight Defect endangers drivers, pedestrians, and other vehicles because it
6 makes accidents wherein the vehicle strikes a person, animal, or object in the
7 roadway more likely, and sometimes entirely unavoidable, depending on the
8 degradation of light output or level of headlight failure. For this reason, Class
9 members have reported fear of driving their Class Vehicles at night or in inclement
10 weather.

11 7. Defendants sold the Class Vehicles with a 6-year/60,000-mile (“Kia
12 Warranty”) or 5-year/60,000-mile (“Hyundai Warranty”) New Vehicle Limited
13 Warranty (“NVLW”) that purports to cover the headlights. However, owners and
14 lessees often have complained that their Headlights fail and require repair or
15 replacement both within and just outside the warranty period and that they are
16 charged for repair even when within the warranty period. This is evidenced
17 through Class Member reports to the National Highway Traffic Safety
18 Administration (“NHTSA”), which demonstrate that Defendants’ authorized
19 dealerships are replacing and repairing Headlights both within, and just outside,
20 the applicable express warranty periods and/or are charging Class Members for
21 repairs within the warranty period.

22 8. The Headlight Defect is inherent in each Class Vehicle and was
23 present at the time of sale.

24 9. Discovery will show that, since 2019, if not earlier, Defendants have
25 been aware the Class Vehicles’ Headlights would need frequent repair,
26 prematurely fail, require frequent replacement, including replacements just
27 outside of warranty, that the replacement Headlights installed would be equally as
28 defective as the originals, and that the Headlight would cause the symptoms of the

1 Headlight Defect described above (poor light output from the headlamp assembly;
2 sudden high beam failure; improper aiming; failed illumination ahead of the
3 vehicle, and fogged or unfocused headlights) yet Defendants continued to equip
4 the Class Vehicles with defective Headlights. Further, Defendants often claim that
5 the warranties they provided with the vehicles do not cover the headlight diagnosis,
6 calibration or replacement, forcing consumers to pay out of pocket. Moreover,
7 Defendants not only refused to disclose the alleged Defect to consumers, they also
8 actively concealed, and continue to conceal, their knowledge concerning the
9 Headlight Defect.

10 10. Defendants undertook affirmative measures to conceal Headlight
11 failures and other malfunctions through, among other things, Technical Service
12 Bulletins (“TSB”) issued to authorized repair facilities only, and not provided to
13 owners or lessees.

14 11. Defendants had superior and/or exclusive knowledge of material facts
15 regarding the Headlight Defect due to their pre-production testing, design failure
16 mode analysis, aggregate part sales, consumer complaints about the Defect to
17 Defendants’ dealers, who are their agents for vehicle repairs, customer complaints
18 made directly to Kia and Hyundai, dealer audits, aggregate warranty information,
19 consumer complaints to and resulting notice from NHTSA, early consumer
20 complaints on websites and internet forums, dealership repair orders, among other
21 internal sources of information about the problem.

22 12. The Headlight Defect is material because, *inter alia*, it poses a safety
23 concern. As attested by Class Members in complaints to the National Highway
24 Traffic Safety Administration (“NHTSA”), and other online forums, the
25 Headlights can suddenly fail or dim, causing inability to perceive pedestrians,
26 animals, and other road hazards, inability to perceive and respond to safety threats,
27 and greatly increased risk of collision.

28 13. Defendants’ failure to disclose the Headlight Defect has caused

1 Plaintiffs and putative class members to lose the use of their Vehicles' Headlights,
2 the use of their vehicles at night or during inclement weather, and/or incur costly
3 repairs that have conferred an unjust substantial benefit upon Defendants.

4 14. Discovery will show that, in an effort to conceal the Headlight Defect,
5 Defendants have instructed dealers to tell consumers their vehicles are "operating
6 normally" or "operating as intended" when they are not, or to give excuses for
7 sub-par performance such as the headlights not being pointed in the correct
8 direction. This is a common practice in the automotive industry. By denying the
9 existence of a defect, manufacturers can play on the consumers' lack of technical
10 expertise and avoid implementing potentially costly fixes for years, or at least until
11 the vehicles are out of warranty. When remedial measures are taken, they are often
12 through the issuance of service bulletins provided to dealers only that are narrowly
13 crafted and underinclusive, as occurred here and set forth below.

14 15. Had Defendants disclosed the Headlight Defect, Plaintiffs and Class
15 Members would not have purchased the Class Vehicles, would have paid less for
16 them, or would have required Defendants to replace, or pay for the replacement
17 of, the defective Headlights with a non-defective version before their warranty
18 periods expired.

19 THE PARTIES

20 Plaintiff Patrick Maranda

21 16. Plaintiff Maranda is a Minnesota citizen residing in Outing,
22 Minnesota.

23 17. In or around fall 2021, Plaintiff Maranda purchased a new 2022
24 Hyundai Palisade from Dondelinger Hyundai, an authorized Hyundai dealership
25 in Baxter, Minnesota.

26 18. Plaintiff Maranda purchased his vehicle primarily for personal,
27 family, or household use.

28 19. Passenger safety and reliability were important factors in Plaintiff

1 Maranda's decision to purchase his vehicle. Before making his purchase, Plaintiff
2 Maranda researched the 2022 Hyundai Palisade online, by "Googling" the vehicle.
3 At the dealership, Plaintiff Maranda also reviewed the vehicle's Monroney Sticker
4 or "window sticker," which listed official information about the vehicle. Plaintiff
5 Maranda also discussed the safety features of the vehicle with dealership
6 personnel, who made no reference to the Headlight Defect. Instead, the dealership
7 salesperson told Plaintiff Maranda the Hyundai Palisade was a "very reliable
8 vehicle." Plaintiff Maranda believed that the 2022 Hyundai Palisade would be a
9 safe and reliable vehicle.

10 20. Defendants' omissions were material to Plaintiff Maranda. Had the
11 Hyundai Defendants disclosed their knowledge of the Headlight Defect before he
12 purchased his vehicle, Plaintiff Maranda would have seen and been aware of the
13 disclosures. Furthermore, had he known of the Headlight Defect, Plaintiff
14 Maranda would not have purchased his vehicle.

15 21. Shortly after purchase, Plaintiff Maranda began experiencing
16 difficulties with his Class Vehicle's Headlights. Specifically, the Headlights do
17 not produce sufficient light on low beam and the high beam Headlights will
18 suddenly and unexpectedly go to low beam, for no ascertainable reason and
19 without an approaching vehicle. Such failures have caused Plaintiff Maranda to
20 reduce his use of the vehicle during the night and during inclement weather.
21 Plaintiff Maranda lives in a rural area that lacks ambient lighting and thus is in
22 fear of, and in danger from, unilluminated pedestrians, animals, and road hazards
23 while driving at night.

24 22. With approximately 15,000 miles on the odometer, Plaintiff Maranda
25 brought his vehicle to Dondelinger Hyundai, an authorized Hyundai dealership in
26 Baxter, Minnesota, complaining of insufficient light output and sudden and
27 unexpected low beam and high beam shutoff. Dealership personnel informed
28 Plaintiff Maranda they had not heard of any issues with the Headlights, they should

1 be “fine,” and no repairs were done.

2 23. Despite bringing his vehicle to a Hyundai dealership—Hyundai’s
3 authorized agent for repairs—Plaintiff Maranda has not received a permanent
4 repair under warranty, and his vehicle continues to exhibit the Headlight Defect.

5 24. As a result of the Headlight Defect, Plaintiff Maranda has lost
6 confidence in the ability of his Class Vehicle to provide safe and reliable
7 transportation for ordinary and advertised purposes, particularly at night and in
8 inclement weather. Further, Plaintiff Maranda will be unable to rely on the Class
9 Vehicles’ advertising or labeling in the future, and so will not purchase or lease
10 another Class Vehicle, although he would like to do so.

11 25. At all times, Plaintiff Maranda, like all Class Members, has driven his
12 vehicle in a manner both foreseeable and in which it was intended to be used.

13 **Plaintiff Robert Ewing**

14 26. Plaintiff Ewing is a South Carolina citizen residing in West Union,
15 South Carolina.

16 27. On or around July 30, 2022, Plaintiff Ewing purchased a new 2022
17 Kia Telluride from Kia of Greer, an authorized Kia dealership located in Greer,
18 South Carolina.

19 28. Plaintiff Ewing purchased his vehicle primarily for personal, family,
20 or household use.

21 29. Passenger safety and reliability were important factors in Plaintiff
22 Ewing’s decision to purchase his vehicle. Before making his purchase, Plaintiff
23 Ewing researched the 2022 Kia Telluride online, by “Googling” the vehicle. At
24 the dealership, Plaintiff Ewing also reviewed the vehicle’s Monroney Sticker or
25 “window sticker,” which listed official information about the vehicle. Plaintiff
26 Ewing also test drove the vehicle and spoke with dealership personnel, who made
27 no reference to the Headlight Defect. Plaintiff Ewing believed that the 2022 Kia
28 Telluride would be a safe and reliable vehicle.

1 30. Defendant's omissions were material to Plaintiff Ewing. Had the Kia
2 Defendants disclosed their knowledge of the Headlight Defect before he purchased
3 his vehicle, Plaintiff Ewing would have seen and been aware of the disclosures.
4 Furthermore, had he known of the Headlight Defect, Plaintiff Ewing would not
5 have purchased his vehicle or would not have purchased his vehicle for the price
6 he did.

7 31. Immediately after purchase, Plaintiff Ewing began experiencing
8 difficulties with his Class Vehicle's Headlights. Specifically, the Headlights do
9 not produce sufficient light, and therefore provide an insufficient field of vision,
10 and using the high beam Headlights makes little difference in the insufficient
11 illumination. Plaintiff Ewing feels particularly unsafe due to the Headlights'
12 insufficient illumination when driving after dark because he lives in a rural area
13 and drives more slowly to compensate for the low visibility as a consequence of
14 the Defect.

15 32. As a result, on or around September 19, 2022, Plaintiff Ewing
16 contacted Kia's Customer Care department, complaining of insufficient light
17 output, including the negligible difference even when the high beams are used.
18 Despite multiple follow up requests as further detailed below, Kia has not
19 addressed his concerns or agreed to repair the issue. Despite multiple follow up
20 requests as further detailed below, Kia has not addressed his concerns or agreed to
21 repair the issue.

22 33. In early October 2022, Plaintiff Ewing raised the insufficient
23 illumination issue with Cory Powell at Kia of Greer. The following week, Plaintiff
24 Ewing also reported the insufficient light output issue to Kia of Anderson, an
25 authorized Kia dealership in Pendleton, South Carolina and made a service
26 appointment at Kia of Anderson, which is closer than Kia of Greer to Plaintiff
27 Ewing's home.

28 34. On November 8, 2022, with 1,916 miles on the odometer, Plaintiff

1 Ewing took his vehicle to Kia of Anderson. According to the service record,
2 dealership personnel made a “small adjustment” to the Headlights, informed
3 Plaintiff that “nothing else [was] needed at [the] time,” and advised Plaintiff “to
4 come back if issue continue[d]”. Despite the alleged repair, Plaintiff Ewing did
5 not notice a difference in the Headlights’ insufficient illumination when driving
6 home after the service visit, which Plaintiff Ewing reported to Mr. Harbin of Kia
7 of Anderson the following day.

8 35. On November 10, 2022, Plaintiff Ewing also raised these concerns
9 with the Kia Customer Care department and spoke with a supervisor named
10 Randy, who advised Mr. Ewing to schedule yet another service appointment at Kia
11 of Anderson.

12 36. Despite bringing his vehicle to a Kia dealership, multiple telephone
13 calls, and at least six (6) email communications to Kia’s authorized dealerships
14 and Kia’s Customer Care department, Plaintiff Ewing’s vehicle continues to suffer
15 from the Defect. Indeed, because Kia and its dealer representatives have failed to
16 address Plaintiff Ewing’s concerns despite being given numerous opportunities to
17 do so, Plaintiff Ewing has not taken his vehicle for another service appointment.
18 Plaintiff Ewing avoids driving after dark because he feels unsafe due to the Defect.

19 37. Indeed, because Kia and its dealer representatives have failed to
20 address Plaintiff Ewing’s concerns despite being given numerous opportunities to
21 do so, Plaintiff Ewing has not taken his vehicle for another service appointment.

22 38. Despite the foregoing, Plaintiff Ewing has not received a permanent
23 repair under warranty, and his vehicle continues to exhibit the Headlight Defect.

24 39. At all times, Plaintiff Ewing, like all Class Members, has driven his
25 vehicle in a manner both foreseeable and in which it was intended to be used.

26 **Defendant Hyundai Motor America, Inc.**

27 40. Defendant Hyundai Motor America, Inc. is a corporation organized
28 and in existence under the laws of the State of California and registered to do

1 business in the State of California. HMA is headquartered in Fountain Valley,
2 California and is a wholly owned subsidiary of HMC.

3 41. HMA is responsible for sales, marketing, service, distribution, import
4 and export of Hyundai branded products, including vehicles and parts, in the
5 United States. HMA is also the warrantor and distributor of Hyundai vehicles,
6 including the Class Vehicles, throughout the United States.

7 42. In order to sell vehicles to the general public, HMA enters into
8 agreements with authorized dealerships who engage in retail sales with consumers
9 such as Plaintiffs. In return for the exclusive right to sell new Hyundai branded
10 vehicles, authorized dealerships are also permitted to service and repair these
11 vehicles under the warranties HMA provides directly to consumers who purchased
12 new vehicles from the authorized dealerships. All service and repair at an
13 authorized dealership is completed according to Hyundai instructions, issued
14 through service manuals, TSBs, and other documents. Per the agreements
15 between HMA and the authorized dealers, consumers such Plaintiffs are able to
16 receive services under HMA's issued warranty at dealer locations that are
17 convenient to them. These agreements provide HMA with a significant amount
18 of control over the actions of the authorized dealerships. For example, HMA
19 employees are appointed as managers for particular regions of the United States
20 and their responsibilities include managing the day-to-day operations of the
21 dealerships located within their regions.¹

22 43. Discovery will show that HMA also developed and disseminated the
23 owner's manual and warranty booklets, advertisements, and other promotional
24 material relating to the Hyundai Class Vehicles.

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26
27 ¹ See, e.g., <https://www.hyundainews.com/en-us/releases/2135> ("Hyundai Motor America
28 named Kimberly Walker General Manager of the Western Region, effective March 1, 2016. In
her new role, Walker will lead the day-to-day operations of more than 165 Hyundai dealerships
across the 12 Western-most states in the United States.").

Defendant Hyundai Motor Company

44. Defendant Hyundai Motor Company is a corporation founded in 1967 under the laws of South Korea and headquartered in Seoul, South Korea.

45. HMC designs, engineers, manufactures, tests, markets, supplies, sells, and distributes Hyundai-branded vehicles and parts for those vehicles worldwide, including the United States, as well as manufactures parts for Kia-branded vehicles. HMC also receives parts manufactured by KMC for use in Hyundai-branded vehicles.

46. HMC is the parent corporation of HMA, as well as the United States based Hyundai facilities, including manufacturing in Alabama and the technical campus in Michigan. For all its United States subsidiaries, including HMA, HMC provides all the technical information for the purposes of manufacturing, servicing, and repairing the Class Vehicles

47. Discovery will show the decision to found HMA in California and register it as a California corporation was made by HMC.

65. Discovery will show that the relationship between HMA and HMC is governed by an agreement that gives HMC the right to control nearly every aspect of HMA's operations—including sales, marketing, management policies, technical information, servicing instructions, governance policies, pricing, and warranty terms. Furthermore, HMC exercises control over the executives in charge of HMA, including appointing the President and CEO of HMA, José Muñoz. In addition to this role, Mr. Muñoz is also the Global Chief Operating Office of HMC.²

Defendant Kia Motors America, Inc.

48. Defendant Kia Motors America, Inc. is a corporation organized and in existence under the laws of the State of California and registered to do business

² See <https://www.hyundainews.com/en-us/bios/jose-munoz> (last accessed November 10, 2022).

1 in the State of California. KMA is headquartered in Irvine, California and is a
2 wholly owned subsidiary of KMC.

3 49. KMA is responsible for sales, marketing, service, distribution, import
4 and export of Kia branded products, including vehicles and parts, in the United
5 States. KMA is also the warrantor and distributor of Kia vehicles, including the
6 Class Vehicles, throughout the United States.

7 50. In order to sell vehicles to the general public, KMA enters into
8 agreements with authorized dealerships who engage in retail sales with consumers
9 such as Plaintiffs. In return for the exclusive right to sell new Kia branded vehicles,
10 authorized dealerships are also permitted to service and repair these vehicles under
11 the warranties KMA provides directly to consumers who purchased new vehicles
12 from the authorized dealerships. All service and repair at an authorized dealership
13 is completed according to Kia instructions, issued through service manuals, TSBs
14 and other documents. Per the agreements between KMA and the authorized
15 dealers, consumers such as Plaintiffs are able to receive services under KMA's
16 issued warranty at dealer locations that are convenient to them. These agreements
17 provide KMA with a significant amount of control over the actions of the
18 authorized dealerships. As with HMA, KMA also employs region managers
19 whose responsibilities include managing the dealers within their region, including
20 marketing and customer satisfaction initiatives.

21 51. Discovery will show that KMA also developed and disseminated the
22 owner's manual and warranty booklets, advertisements, and other promotional
23 material relating to the Kia Class Vehicles.

24 **Defendant Kia Motor Company**

25 52. Defendant Kia Motor Company is a corporation founded in 1944
26 under the laws of South Korea and headquartered in Seoul, South Korea.

27 53. KMC designs, engineers, manufactures, tests, markets, supplies,
28 sells, and distributes Kia-branded vehicles and parts for those vehicles worldwide,

1 including the United States. One of KMC's major suppliers for parts is HMC. In
2 turn, KMC is also a major supplier to HMC of parts to be used Hyundai-branded
3 vehicles.

4 54. KMC is the parent corporation of KMA, as well as the United States
5 based Kia facilities, including manufacturing in Georgia. For all its United States
6 subsidiaries, including KMA, KMC provides all the technical information for the
7 purposes of manufacturing, servicing, and repairing the Class Vehicles.

8 55. Discovery will show that the decision to found KMA in California
9 and register it as a California corporation was made by KMC.

10 56. Discovery will show that the relationship between KMA and KMC is
11 governed by an agreement that gives KMC the right to control nearly every aspect
12 of KMA's operations—including sales, marketing, management policies,
13 technical information, servicing instructions, governance policies, pricing, and
14 warranty terms.

15 57. Defendants, through their various entities, design, manufacture,
16 market, distribute, service, repair, sell, and lease passenger vehicles, including the
17 Class Vehicles, nationwide and in Minnesota and South Carolina.

18 58. Defendants HMC and KMC worked together to develop, design,
19 manufacture, test, and draft technical materials for the Class Vehicles and the
20 Gamma engines. In fact, HMC and KMC are controlled by the same parent,
21 Hyundai Motor Group, and the chairman of the board of both companies is Eui-
22 sun Chung.

23 59. Defendants worked together on the drafting and distribution of all
24 advertising materials and technical bulletins regarding the Class Vehicles to
25 authorized dealers, as well as in training Hyundai and Kia-dealer technicians in
26 the correct procedures to maintain, service, and repair Hyundai and Kia vehicles.

27 60. At all relevant times, Defendants were and are engaged in the
28 business of designing, manufacturing, constructing, assembling, marketing,

1 distributing, and selling automobiles and motor vehicle components in Minnesota,
2 South Carolina, and throughout the United States of America.

3 JURISDICTION

4 61. This is a class action.

5 62. Members of the proposed Class number more than 100 and at least
6 one plaintiff and one defendant are citizens of different states.

7 63. There are at least 100 members in the proposed class, and the
8 aggregate claims of individual Class Members exceed \$5,000,000.00 in value,
9 exclusive of interest and costs.

10 64. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

11 65. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
12 submit to this Court's jurisdiction. This Court has personal jurisdiction over
13 Defendants because KMA and HMA are incorporated in this District; KMC and
14 HMC conduct substantial business in this District through KMA and HMA,
15 respectively; and discovery will show that significant conduct involving
16 Defendants giving rise to the Complaint took place in this District.

17 VENUE

18 66. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
19 the conduct giving rise to this lawsuit occurred here, KMA and HMA are deemed
20 to reside in this district pursuant to 28 U.S.C. § 1391(a), and KMA and HMA are
21 incorporated here, and Defendants are subject to personal jurisdiction here by
22 conducting business within the State of California.

23 FACTUAL ALLEGATIONS

24 67. Defendants designed, manufactured, distributed, marketed, sold,
25 and/or leased the Class Vehicles. Defendants sold, directly or indirectly, through
26 dealers and other retail outlets, thousands of Class Vehicles in California and
27 nationwide. Defendants warrant and service the Class Vehicles through their
28 nationwide network of authorized dealers and service providers.

1 68. Defendants provided all purchasers or lessees of the Class Vehicles
2 with a New Vehicle Limited Warranty (“NVLW”). The terms of these warranties
3 are non-negotiable and Defendants exercise sole authority in determining whether
4 and to what extent a particular repair is covered under the warranties they offers.

5 69. The NVLW provided by KMA includes basic warranty coverage and
6 Power Train coverage, stated in relevant part:

7 **Basic Warranty Coverage**

8 Except as limited or excluded below, all components of your new Kia
9 Vehicle are covered for 60 months/60,000 miles from the Date of First
10 Service, whichever comes first (Basic Limited Warranty Coverage).
11 This Warranty does not cover wear and maintenance items, or those
12 items excluded elsewhere in the Manual.

13 **Power Train Coverage**

14 For Original Owners (defined below), the Power Train Limited
15 Warranty begins upon expiration of the 60 month/60,000 mile Basic
16 Limited Warranty Coverage, and will continue to cover the following
17 components up to 120 months or 100,000 miles from the Date of First
18 Service, whichever comes first. It does not cover normal wear and
19 tear, maintenance, or those items excluded elsewhere in this manual.

20 **To Get Warranty Service**

21 You must take your Kia Vehicle, along with this manual, to an
22 Authorized Kia Dealer in the United States during its normal service
23 hours. While any Authorized Kia Dealer will perform warranty
24 service, Kia recommends that when possible you return to the
25 dealership where you purchased your Kia Vehicle in order to ensure
26 continuity in service and maintenance.

27 **Other Terms**

28 The warranty coverage is “applicable to Kia Vehicles registered and

1 normally operated in the United States.”³

2 70. KMA further warrants that “it will arrange for an Authorized Kia
3 dealer at locations of its choice to provide for the repair of your vehicle if it fails
4 to function properly during normal use. Authorized service facilities will remedy
5 such failures to function properly at Kia’s expense...”⁴

6 71. HMA provides a similar NVLW for the Class Vehicles, which states
7 in relevant part:

8 **WHAT IS COVERED**

9 Repair or replacement of any component originally manufactured or
10 installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai
11 Motor Manufacturing Alabama (HMMMA), Kia Manufacturing Mexico
12 (KMM), Kia Motors Manufacturing Georgia (KMMG) or Hyundai Motor
13 America (HMA) that is found to be defective in material or workmanship
14 under normal use and maintenance, except any item specifically referred to
15 in the section “What is not Covered.” Towing expense to the nearest
16 Hyundai Dealership or Authorized Service Facility is covered when the
17 vehicle is inoperable due to a warrantable defect. Repairs will be made
18 using new Hyundai Genuine Parts or Hyundai authorized remanufactured
19 parts.

20 **WARRANTY PERIOD**

21 The warranty period is limited to 5 years from the date of original retail
22 delivery or date of first use, or 60,000 miles, whichever occurs first.

23 **OBTAINING WARRANTY SERVICE**

24 Warranty service will be provided by an authorized Hyundai Dealership
25 without charge for parts or labor. This warranty will not apply to warranty
26

27 ³ *Id.*

28 ⁴ *Id.*

1 service performed by those other than an authorized Hyundai Dealership.⁵

2 72. Headlights are important and necessary safety equipment on all motor
3 vehicles. “Vehicle headlamps primarily satisfy two safety needs: Visibility and
4 glare prevention. Headlamps illuminate the area ahead of the vehicle and provide
5 forward visibility. . . . Visibility and glare are both related to motor vehicle safety.
6 . . . Visibility has an obvious, intuitive relation to safety: The better drivers can see
7 the road, the better they can react to road conditions and obstacles to avoid crashes.
8 . . . [e]vidence suggests that diminished visibility likely increases the risk of
9 crashes, particularly crashes at higher speeds involving pedestrians, animals,
10 trains, and parked cars.”⁶

11 73. In 2019, Kia released its all-new flagship SUV, the 2020 Kia
12 Telluride, while touting its capabilities and safety: “Telluride is engineered to be
13 capable in a variety of driving conditions and provide a driving experience that is
14 enjoyable and confidence-inspiring.”⁷ All Kia Telluride models LS, X, and EX,
15 through present, come standardly quipped with halogen headlights. Kia Telluride
16 LX models come standardly equipped with LED headlights. For reference, Figure
17 1 shows the Kia Telluride’s headlight assembly.

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23 https://www.hyundaiusa.com/content/dam/hyundai/us/com/pdf/assurance/2020_Owners_Handbook_Warranty_r2.pdf

24 ⁶ Federal Register. “Federal Motor Vehicle Safety Standards; Lamps, Reflective
25 Devices, and Associated Equipment, Adaptive Driving Beam Headlamps” February 2, 2022,
26 available at: <https://www.federalregister.gov/documents/2022/02/22/2022-02451/federal-motor-vehicle-safety-standards-lamps-reflective-devices-and-associated-equipment-adaptive#citation-3-p9918> (last accessed November 11, 2022).

27 ⁷ “All-New 2020 Kia Telluride Offers Rugged Luxury,” January 4, 2019, available at:
28 <https://www.kiamedia.com/us/en/media/pressreleases/14874/all-new-2020-kia-telluride-offers-rugged-luxury> (last accessed November 11, 2022).

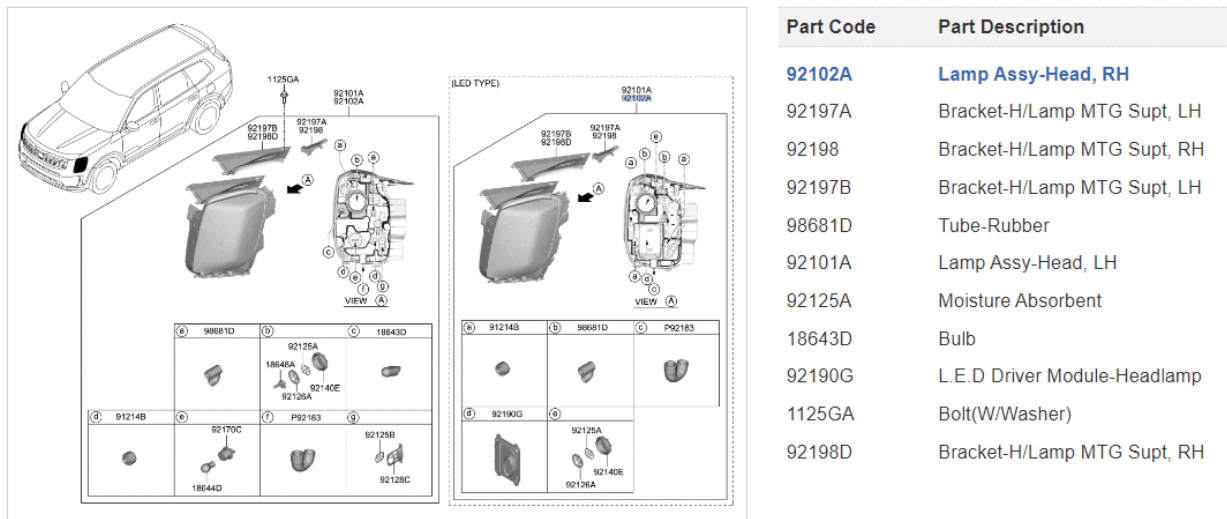
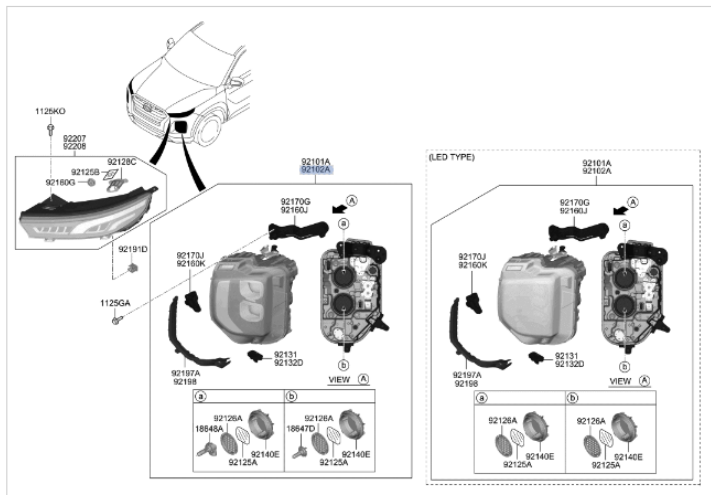


Fig. 1. Kia Telluride Headlight Assembly

74. Also in 2019, Hyundai released its all-new flagship SUV, the 2020 Hyundai Palisade, while touting its capabilities and safety: “All-New 2020 Hyundai Palisade Flagship SUV Brings Exceptional Comfort, Technology and Safety in a Bold Midsize SUV.”⁸ As with Kia, all Hyundai Palisade models SE and SEL, through present, come standardly equipped with halogen headlights. Hyundai Palisade Limited models come standardly equipped with LED headlights. For reference, Figure 2 shows the Hyundai Palisade’s headlight assembly.

⁸ “All-New 2020 Hyundai Palisade Mid-size SUV Makes its Global Debut at the 2018 Los Angeles Auto Show,” November 28, 2018, available at <https://www.hyundainews.com/en-us/releases/2658> (last accessed November 14, 2022).



| Part Code | Part Description |
|-----------|---------------------------------|
| 92102A | Lamp Assy-Head, RH |
| 92170J | Bracket-Head Lamp, LH |
| 92131 | Bracket Assy-Head Lamp Mtg, LH |
| 92128C | Cartridge-Moisture Absorbent |
| 92191D | Clip-Head Lamp Mtg |
| 92125B | Moisture Absorbent |
| 92208 | Lamp Assy-Day Running Light, RH |
| 92207 | Lamp Assy-Day Running Light, LH |
| 1125GA | Bolt(W/Washer) |
| 92198 | Bracket-H/Lamp Mtg Suport, RH |
| 92197A | Bracket-H/Lamp Mtg Suport, LH |

Fig. 2. Hyundai Palisade Headlight Assembly

75. All headlights and headlight assemblies are expected to absorb some moisture and still operate safely. However, discovery will show that the Headlights installed in the Class Vehicles have insufficient sealing and improper wiring, causing the Headlight Assemblies, including the high beams, low beams, daytime running lights (DRL), and fog lamps (FL), to absorb too much moisture and begin to dim, become improperly aimed, and ultimately and often suddenly, fail.

76. The Class Vehicles Headlights are defective because they are designed, manufactured, and/or installed in a manner that does not seal out moisture and humidity to a sufficient degree, which causes the Headlight assemblies' internal components, including the wiring and wiring connections, to fail, thereby causing a drastic reduction in light output, an unintentional change to aim calibration, and an inability to operate or function at all. Figure 3 shows a Class Vehicle headlight with improper water moisture and humidity intrusion that will require replacement.



Fig. 3. Class Vehicle Headlight Assembly with Improper Moisture Intrusion

77. The wiring and wiring connections are housed inside the headlight assembly and are vulnerable to improper moisture and humidity intrusion, which can cause the wiring and wiring connections to quickly degrade, thereby causing the Headlights, including the low beams, to not operate. For reference, Figures 4.1 through 4.3 show the location of the wiring and connections inside the headlight assembly of the Class Vehicles.



Fig. 4.1. Class Vehicle Headlight Assembly



Fig. 4.2. Inside of Headlight Assembly with Circular Seal in Upper Right Corner



Fig. 4.3. Wiring and Headlight Connections Inside Circular Seal within Headlight Assembly

1 consumers who purchased the Class Vehicles and experienced the Defect. Despite
 2 this knowledge, Defendants failed to disclose the Defect and its associated safety
 3 risk to consumers. As a result of this failure, Plaintiffs and Class Members have
 4 been damaged.

5 **The Headlight Defect Poses an Unreasonable Safety Hazard**

6 83. The Headlight Defect poses an unreasonable safety hazard. The
 7 Defect causes drivers to have low or no visibility in the front of their Class
 8 Vehicles, which in turn increases the likelihood of collision with pedestrians,
 9 animals, inanimate objects, and road hazards.⁹ For this reason, functioning
 10 headlights are required safety devices in all passenger automobiles. *See* 49 CFR §
 11 238.443 (2018).

12 84. Federal law requires automakers like Defendants to be in close
 13 contact with NHTSA regarding potential auto defects, including imposing a legal
 14 requirement (backed by criminal penalties) compelling the confidential disclosure
 15 of defects and related data by automakers to NHTSA, including field reports,
 16 customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414,
 17 114 Stat.1800 (2000).

18 85. Automakers have a legal obligation to identify and report emerging
 19 safety-related defects to NHTSA under the Early Warning Report requirements.
 20 *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints
 21 regarding their automobiles as part of their ongoing obligation to identify potential
 22 defects in their vehicles, including those which are safety related. *Id.* Discovery
 23 will show that HMA and KMA are the agents of HMC and KMC respectively for
 24 the purpose of monitoring the NHTSA complaint database and for communication
 25

26 ⁹ *See* Federal Register. “Federal Motor Vehicle Safety Standards; Lamps, Reflective
 27 Devices, and Associated Equipment, Adaptive Driving Beam Headlamps” February 2, 2022,
 28 available at: <https://www.federalregister.gov/documents/2022/02/22/2022-02451/federal-motor-vehicle-safety-standards-lamps-reflective-devices-and-associated-equipment-adaptive#citation-3-p9918> (last accessed November 11, 2022).

1 with NHTSA regarding safety defects, as manufacturers are required to do by
 2 federal law. Thus, Defendants knew or should have known of the many
 3 complaints about the Headlight Defect logged by NHTSA Office of Defects
 4 Investigation (ODI). The content, consistency, and disproportionate number of
 5 those complaints alerted, or should have alerted, Defendants to the Headlight
 6 Defect.

7 86. With respect solely to the Class Vehicles, the following are but a few
 8 examples of the many complaints concerning the Headlight Defect which are
 9 available through NHTSA's website, www.safercar.gov. Many of the complaints
 10 reveal that Defendants, through their network of dealers and repair technicians,
 11 have been made aware of the Headlight Defect. In addition, the complaints
 12 indicate that despite having knowledge of the Headlight Defect and even armed
 13 with knowledge of the exact vehicles affected, Defendants often refused to
 14 diagnose the defect or otherwise attempt to repair it while Class Vehicles were still
 15 under warranty.

16 **2020 Kia Telluride**

17 a. **DATE OF INCIDENT:** September 14, 2019

18 **DATE COMPLAINT FILED:** September 16, 2019

19 **NHTSA/ODI ID:** 11255716

20 **SUMMARY:** THE HEADLIGHTS AT NIGHT ARE POOR. THEY
 21 DO NOT ILLUMINATE TRAFFIC SIGNS SUCH AS: SPEED
 22 LIMIT, STOP, STREET/HIGHWAY INFO, YIELD, WARNING,
 23 ETC. WHEN YOU APPROACH A THE UPSIDE OF A HILL,
 24 VISIBILITY IS LIMITED TO 30-50 FEET. SIDE VISION WHEN
 25 TURNING IS NON-EXISTENT. THIS OCCURS AT NIGHT WHEN
 26 IN MOTION AND STOPPED.

27 b. **DATE OF INCIDENT:** November 10, 2019

28 **DATE COMPLAINT FILED:** November 14, 2019

NHTSA/ODI ID: 11280024

SUMMARY: THE TELLURIDE EX HAS AN ISSUE WITH IT'S
 HEADLIGHTS, ESPECIALLY IN A DIMLY LIT AREA. WHEN
 THE HEADLIGHTS ARE IN NORMAL MODE (NOT HIGH

1 BEAM) ON A STREET THAT DOES NOT HAVE STREETLIGHTS
2 (NO AMBIENT LIGHTS) OR YOU ARE GOING AROUND A
3 TURN, OR YOU ARE GOING SLIGHTLY UPHILL, THERE IS
4 VERY LITTLE VISIBILITY ON THE ROAD. YOU CAN SEE A
5 DISTINCT CUT OFF OF THE HEAD LIGHT AND YOU CANNOT
6 SEE BEYOND IT. THIS MAKES IT VERY VERY DIFFICULT TO
7 DRIVE IN A LOW LIGHT ENVIRONMENT. IF I AM ON A
8 HIGHWAY OR A WELL LIT ROAD, THERE IS NO ISSUE. MY
9 OTHER CAR 2010 AUDI A4 DOES NOT HAVE THIS ISSUE AND
10 THE HEADLIGHTS ILLUMINATE THE ROAD ADEQUATELY
11 IN ANY CONDITION

12 c. **DATE OF INCIDENT:** November 19, 2019

13 **DATE COMPLAINT FILED:** November 20, 2019

14 **NHTSA/ODI ID:** 11281250

15 **SUMMARY:** HALOGEN HEADLAMPS ON THE EX MODEL DO
16 A POOR JOB OF ILLUMINATING THE ROAD AHEAD WHEN IN
17 LOW BEAM MODE. I CAN HARDLY SEE A FEW FEET. I ALSO
18 DRIVE A LEXUS WHOSE HEADLAMPS DO A FANTASTIC JOB
19 OF ILLUMINATION IN LOW BEAM. I AM HAVING TO
20 PERIODICALLY ALTERNATE BETWEEN HIGH BEAM AND
21 LOW BEAM MODES (TO AVOID BLINDING OPPOSITE
22 TRAFFIC) WHEN DRIVING THE TELLURIDE ON UNLIT
23 ROADS OR POORLY LIT ROADS. WHY DIDN'T KIA PROVIDE
24 LED HEADLIGHTS FOR ALL TRIM LEVELS? THIS IS A
25 SERIOUS SAFETY ISSUE.

26 d. **DATE OF INCIDENT:** August 3, 2019

27 **DATE COMPLAINT FILED:** November 21, 2019

28 **NHTSA/ODI ID:** 11281548

SUMMARY: THIS IS A NEW VEHICLE, PURCHASED 8/2019. IT
IS MY BELIEF THAT THE HEADLIGHTS (BOTH HIGH AND
LOW BEAM), AS EQUIPPED, ARE DANGEROUSLY DEFICIENT
AND DO NOT PROVIDE NEARLY ADEQUATE
ILLUMINATION. I AM HESITANT TO DRIVE THE VEHICLE AT
NIGHT. I CONSIDER THIS HAZARDOUS AND WORTHY OF
CORRECTION BY THE MANUFACTURER. KIA TELLURIDE
EX AWD.

e. **DATE OF INCIDENT:** October 1, 2019

DATE COMPLAINT FILED: December 29, 2019

NHTSA/ODI ID: 11291891

1 **SUMMARY:** I HAVE A 2020 TELLURIDE AND THE
2 HEADLIGHTS PROVIDE SO LITTLE LIGHT THAT IT'S
3 DANGEROUS TO DRIVE AT NIGHT. THE NORMAL BEAMS
4 ARE SO DIFFUSE THEY PROVIDE INSUFFICIENT LIGHT
5 FORWARD TO SEE THE ROAD CLEARLY AND PROVIDE NO
6 LIGHT TO THE SIDES, SO YOU CAN'T SEE WHAT YOU ARE
7 TURNING INTO WHEN YOU TURN. I CALLED KIA AND TWO
8 LOCAL KIA DEALERS; THEY ARE AWARE OF THE PROBLEM
9 BUT SAY THEY HAVE NO WAY TO FIX IT. GOOD
10 HEADLIGHTS ARE FUNDAMENTAL AND, REALLY, AFTER
11 100 YEARS OF CARS WITH HEADLIGHTS, YOU'D THINK
12 THEY COULD GET THIS RIGHT. PLEASE FORCE KIA TO
13 RECALL THE CARS AND FIX THE HEADLIGHTS AS SOON AS
14 POSSIBLE. THANK YOU. SANDRA THANK YOU. SANDRA

15 f. **DATE OF INCIDENT:** November 26, 2019

16 **DATE COMPLAINT FILED:** January 24, 2020

17 **NHTSA/ODI ID:** 11301584

18 **SUMMARY:** THIS IS AN ONGOING ISSUE. THE HEADLIGHTS
19 ON MY EX MODEL ARE SERIOUSLY DEFICIENT AND
20 DANGEROUS, ESPECIALLY DURING DRIVING IN LOW
21 LIGHT AREA DURING TURNS. AT MY OWN EXPENSE I'VE
22 PURCHASED LED BULBS, WHICH HAVE IMPROVED
23 VISIBILITY AHEAD OF ME, INCLUDING BEING, NOW, ABLE
24 TO SEE THE SIDES OF THE ROAD, HOWEVER, VISIBILITY
25 DURING TURNS IS NON-EXISTENT. AFTER 30 + YEARS OF
26 DRIVING I HAVE NEVER BEEN SO UNCOMFORTABLE
27 DRIVING AT NIGHT.

28 g. **DATE OF INCIDENT:** January 26, 2020

DATE COMPLAINT FILED: January 27, 2020

NHTSA/ODI ID: 11302348

SUMMARY: THE HEADLIGHTS ON THIS CAR ARE
DANGEROUS AT NIGHT ON STREETS WITH NO LIGHTING
AND ESPECIALLY DANGEROUS WHEN ITS RAINING. THE
LIGHTS DO NO ILLUMINATE SPEED LIMIT SIGNS, STOP
SIGNS, CAUTION SIGNS, YIELD SIGNS ETC. THEY DO NOT
ILLUMINATE OVERHEAD INTERSTATE SIGNS. I HAVE
TAKEN THE CAR TO THE DEALER AND THEY SAID THE
LIGHTS ARE WORKING AS DESIGNED. THE INSURANCE
INSTITUTE FOR HIGHWAY SAFETY ALSO GIVES A POOR
RATING TO THESE LIGHTS. SOMETHING NEEDS TO BE

1 DONE BEFORE SOMEONE GETS KILLED.

2 h. **DATE OF INCIDENT:** January 24, 2020
3 **DATE COMPLAINT FILED:** January 27, 2020
4 **NHTSA/ODI ID:** 11302241

5 **SUMMARY:** HEADLIGHTS ON LX TRIM ARE EXTREMELY
6 DIM. INSUFFICIENT FOR NIGHT DRIVING, CURVY/HILLY
7 ROADS, RAINY CONDITIONS. LANE MARKERS ARE NEARLY
8 IMPOSSIBLE TO SEE.

9 i. **DATE OF INCIDENT:** January 10, 2020
10 **DATE COMPLAINT FILED:** February 5, 2020
11 **NHTSA/ODI ID:** 11307230

12 **SUMMARY:** HALOGEN BULBS IN HEADLIGHTS ON S TRIM
13 ARE SUBOPTIMAL FOR ROADWAY ILLUMINATION DURING
14 NIGHTTIME DRIVING REGARDLESS OF TERRAIN,
15 ENVIRONMENT, OR DIRECRION. UPGRADE TO LED BULBS
16 SHOULD RESULT IN IMPROVED VISIBILITY.

17 j. **DATE OF INCIDENT:** April 26, 2019
18 **DATE COMPLAINT FILED:** February 4, 2020
19 **NHTSA/ODI ID:** 11306967

20 **SUMMARY:** THE HEADLIGHTS ON THIS CAR ARE
21 DANGEROUS AT NIGHT AND ARE ESPECIALLY
22 DANGEROUS WHEN IT'S RAINING. THE LIGHTS DO NO
23 ILLUMINATE SPEED LIMIT SIGNS, STOP SIGNS, CAUTION
24 SIGNS, YIELD SIGNS ETC... THE HEADLIGHTS DO NOT
25 ILLUMINATE FAR ENOUGH AHEAD ON THE ROADS. IF
26 YOUR GOING UP OR DOWN A HILL TO SEE A SAFE DRIVING
27 DISTANCE AHEAD.

28 k. **DATE OF INCIDENT:** November 30, 2019
DATE COMPLAINT FILED: February 4, 2020
NHTSA/ODI ID: 11306971

SUMMARY: THE HEADLIGHTS ON MY EX MODEL ARE
SERIOUSLY DEFICIENT AND DANGEROUS, ESPECIALLY
DURING DRIVING IN LOW LIGHT AREA DURING TURNS. AT
MY OWN EXPENSE I'VE PURCHASED LED BULBS, WHICH
HAVE IMPROVED VISIBILITY AHEAD OF ME. HOWEVER,
THE LIGHT IS BLOCKED BY THE PROJECTOR TYPE
HOUSING FROM ILLUMINATING THE LEFT AND RIGHT
SIDES OF THE FRONT OF THE VEHICLE. VISIBILITY DURING

1 TURNS IS NON-EXISTENT. THIS NEEDS TO BE ADDRESSED
2 ASAP.

3 1. **DATE OF INCIDENT:** February 3, 2020

DATE COMPLAINT FILED: February 4, 2020

4 **NHTSA/ODI ID:** 11307078

5 **SUMMARY:** EXTERIOR LIGHTING (HEADLIGHTS) IS
6 TERRIBLE ON MY EX MODEL. STANDARD OE HEADLIGHTS
7 ARE FAR TOO INADEQUATE FOR SAFE DRIVING AT NIGHT.
8 SIDE CUTOFF OF THE HEADLIGHTS MAKES READING
9 STREET SIGNS DIFFICULT WHEN THERE IS NO
10 SUPPLEMENTAL LIGHT OUTSIDE OF THE CAR
11 HEADLIGHTS. THESE HEADLIGHTS SHOULD BE LED (IT'S
12 2020 FOR [XXX] SAKE) AND NOT SO CONCENTRATED LIKE
A SPOT LIGHT. INFORMATION REDACTED PURSUANT TO
THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C.
552(B)(6). *TR.

13 m. **DATE OF INCIDENT:** February 2, 2020

DATE COMPLAINT FILED: February 2, 2020

14 **NHTSA/ODI ID:** 11306611

15 **SUMMARY:** WHEN DRIVING AT NIGHT IN THE EX TRIM,
16 THE HALOGEN LIGHTBULBS ARE INEFFECTIVE FOR
17 LIGHTING THE ROADWAY AHEAD. OUTSIDE OF CITY
18 DRIVING WHERE OUTSIDE LIGHTING IS MINIMAL, IT IS
19 NEARLY IMPOSSIBLE TO SEE A SAFE DISTANCE AHEAD OF
20 THE VEHICLE. IN ADDITION, BECAUSE OF THE CUTOFF
DESIGN OF THE PROJECTOR HOUSING, STREET SIGNS SUCH
AS STOP SIGNS AND SPEED LIMIT SIGNS ARE BARELY
ILLUMINATED AT ALL.

21 n. **DATE OF INCIDENT:** May 14, 2020

22 **DATE COMPLAINT FILED:** May 19, 2020

23 **NHTSA/ODI ID:** 11325091

24 **SUMMARY:** THE HEADLIGHTS IN THE KIA TELLURIDE ARE
25 SIGNIFICANTLY DEFICIENT IN ILLUMINATING THE FRONT
26 CORNERS OF THE VEHICLE DURING TURNS IN LOW OR
27 NON-LIT AREAS. DRIVING IN MY NEIGHBORHOOD AND ON
28 THE ROADS THAT GET ME THERE FEELS EXTREMELY
DANGEROUS WHILE DRIVING AT NIGHT. VISIBILITY WHEN
TURNING CORNERS IS DANGEROUSLY LOW. THIS SCARES
ME NOT ONLY AS A TELLURIDE OWNER BUT AS A

1 PEDESTRIAN AND A PARENT WITH TWO SMALL CHILDREN.
 2 AS THE TELLURIDE'S POPULARITY CONTINUES TO GROW
 3 SO DOES THE SAFETY HAZARD THESE POORLY DESIGNED
 4 HEADLIGHTS POSE. CORRECTIVE ACTION TO
 5 ADEQUATELY AND SAFELY ILLUMINATE THE ROAD
 6 WHILE MAKING TURNS IS ESSENTIAL AND NEEDS TO BE
 7 ADDRESSED IMMEDIATELY. PLEASE DO THE RESPONSIBLE
 8 THING AND PROTECT FAMILIES AND COMMUNITIES BY
 9 RECALLING THE TELLURIDE AND MAKE A SIMPLE DESIGN
 10 CHANGE THAT WOULD NOT ONLY IMPROVE OWNER
 11 SATISFACTION, BUT ALSO PROTECT A POTENTIALLY
 12 UNSEEN PEDESTRIAN, JOGGER, BICYCLIST OR PET. A
 13 VEHICLE'S SAFETY SHOULD BE PARAMOUNT BOTH DAY
 14 AND NIGHT. IF NOTHING ELSE, PLEASE PROVIDE THE
 15 OPTION FOR TELLURIDE OWNERS TO WIDEN THE
 16 HEADLIGHT BEAM AT OUR OWN EXPENSE SO WE CAN
 17 CHOOSE TO PROTECT OURSELVES AND OUR NEIGHBORS
 18 BY PAYING FOR IT OUT-OF-POCKET. *TR.

13 o. **DATE OF INCIDENT:** March 1, 2020

14 **DATE COMPLAINT FILED:** March 3, 2020

15 **NHTSA/ODI ID:** 11315912

16 **SUMMARY:** NIGHT DRIVING IS HORRIBLE ON THE EX TRIM
 17 WHERE VISIBILITY ON EITHER SIDE IS DANGEROUS. I
 18 ALMOST HIT A PEDESTRIAN BECAUSE THE VISIBILITY IS
 19 SO POOR. THIS NEEDS TO BE ADDRESSED. PLEASE DON'T
 20 WAIT FOR SOMEONE TO BE FATALLY INJURED. THIS IS
 21 UNACCEPTABLE!

20 p. **DATE OF INCIDENT:** February 29, 2020

21 **DATE COMPLAINT FILED:** March 2, 2020

22 **NHTSA/ODI ID:** 11315718

23 **SUMMARY:** LIGHTING FAILS TO ILLUMINATE TO THE
 24 SIDES OF THE VEHICLE ON THE EX TRIM SO THAT THERE
 25 ARE SPOTS OF NO LIGHTING. THIS IS EXTREMELY
 26 DANGEROUS WHEN DRIVING AT NIGHT AND
 27 PARTICULARLY WHEN TURNING CORNERS. THIS SHOULD
 28 BE REMEDIED AND A RECALL ISSUED TO CORRECT THE
 CONCERN AS IT IS A SERIOUS SAFETY HAZARD.

q. **DATE OF INCIDENT:** March 1, 2020

DATE COMPLAINT FILED: February 26, 2020

1 **NHTSA/ODI ID:** 11311596

2 **SUMMARY:** BLIND SPOT COLLISION WARNING SYSTEM IS
 3 MALFUNCTIONS WHENEVER IT RAINS. VEHICLE HAS 3000
 4 MILES ON IT AND FOR THE 5TH TIME IN 2 MONTHS THE
 5 BLIND SPOT SYSTEM ALARM SYSTEM GOES OFF WHILE
 6 DRIVING IN THE RAIN. DEALERSHIPS REFUSING TO LOOK
 7 AT THE PROBLEM UNLESS THE ENGINE LIGHT IS ON,
 8 WHICH IT TURNS OFF ONCE THE SENSORS DRY OFF LOW
 9 BEAM LIGHTS ARE TOO BRIGHT... POLICE HAVE STOPPED
 10 ME TWICE THINKING THEY ARE HIGH BEAMS.. ALSO
 11 ONCOMING TRAFFIC CONTINUES TO BLAST THERE HIGH
 12 BEAMS AT OUR VEHICLE THINKING OUR HIGH BEAMS ARE
 13 ON CAUSING A DANGEROUS DRIVING SITUATION.. LOCAL
 14 DEALERSHIPS REFUSE TO FIX WARRANTY PROBLEMS
 15 BECAUSE CAR WAS NOT PURCHASSED FROM THEM

16 **r. DATE OF INCIDENT:** February 15, 2020

17 **DATE COMPLAINT FILED:** February 17, 2020

18 **NHTSA/ODI ID:** 11309673

19 **SUMMARY:** THE HEADLIGHTS HAVE BLIND SPOTS ON THE
 20 SIDES. WHEN GOING AROUND CURVES YOU LOOSE THE
 21 SIDE OF THE ROAD. NO VISIBILITY AT ALL AT NIGHT. THIS
 22 IS VERY DANGEROUS. I HAVE TALKED TO COMPANYS
 23 THAT INSTALLS HEADLIGHTS AND OTHER MECHANICAL
 24 PARTS TO VEHICLES AND WAS TOLD THAT ADDING FOG
 25 LIGHTS WILL NOT HELP BECAUSE THE HEADLIGHTS ARE
 26 ONLY PROJECTING FORWARD LIGHTS. WAS TOLD THAT
 27 ADDING FOG LIGHTS WOULD ONLY PROJECT FORWARD
 28 ALSO BECAUSE OF THE WAY THEY WOULD HAVE TO SET.
 THIS NEEDS TO BE CORRECTED!!!

2021 Kia Telluride

1 **s. DATE OF INCIDENT:** January 3, 2022

2 **DATE COMPLAINT FILED:** January 11, 2022

3 **NHTSA/ODI ID:** 11447121

4 **SUMMARY:** Optional LED headlight buckets fog up and will not dry
 5 out. Kia has a service bulletin out regarding this issue, it was
 6 performed and the situation has not improved. Recently, in minus 20-
 7 30 degree F weather, the condensation inside the housing frosted up
 8 the entire inside of the housing. The LED headlights do not generate
 9 enough heat to adequately melt the frost creating decreased headlight

1 performance. The vehicle has been into the dealer multiple times and
 2 the service bulletin was performed once and the desiccant packs were
 3 replaced the second time. The frost issue occurred after both had been
 4 done. Kia states that this is normal operation for their LED headlight
 bucket and the dealership, claiming to be under orders from Kia will
 not dedicate any more time to the investigation of my issue.

5 t. **DATE OF INCIDENT:** December 8, 2020

6 **DATE COMPLAINT FILED:** December 8, 2021

7 **NHTSA/ODI ID:** 11443178

8 **SUMMARY:** Kia has been on notice of the Telluride's deficient
 9 headlights with the ES model since at least 2019 and have done
 10 nothing. The highest end model has LED lights so Kia is more than
 11 capable of fixing this problem. I know that dozens of consumers like
 12 myself have filed complaints with the NHTSA and other organizations
 13 and nothing has been done. I have called Kia headquarters at least 3
 14 times to complain. The headlights do not provide enough light to
 15 safely drive at night. I'm not an engineer (I'm a lawyer) but I know that
 16 the design is faulty. Now that it's wintertime and dark at 5:00, I am
 17 unable to drive the car at night for fear of killing myself, my family, a
 18 pedestrian, or pet. Why hasn't NHTSA done anything to investigate
 19 these numerous complaints? Why have years gone on with resolution
 20 or recall? Is Kia (or the NHSTA) waiting for someone to actually die
 before they do something? (It seems so based on the below questions).
 I guess it's not enough that consumers like myself can't use our cars at
 night. I CAN'T BE ANY CLEARER: SOMEONE IS GOING TO GET
 KILLED. YOU ARE ON NOTICE. Please let me know the results of
 your investigation into this matter because this has gone on long
 enough. Conduct an investigation and get to the bottom on this please.

21 u. **DATE OF INCIDENT:** July 1, 2021

22 **DATE COMPLAINT FILED:** July 20, 2021

23 **NHTSA/ODI ID:** 11425646

24 **SUMMARY:** This car is very dangerous to drive at night particularly
 25 when making turns. There is a total blackout when turning on darker
 26 roads. Obviously test drives are done during the day so you wouldn't
 27 notice this problem. After reviewing a Telluride Forum this was
 28 apparently a problem on the 2020 vehicles that has not been addressed
 by Kia. Some members of forum have suggested switching front
 headlights out to LED but that is not a good option as I live in an area
 where visibility can be made worse with LED when snowing. Had I
 been aware of this problem never would have purchased this car. Very

scary to drive at night.

v. **DATE OF INCIDENT:** October 15, 2020

DATE COMPLAINT FILED: November 19, 2020

NHTSA/ODI ID: 11315912

SUMMARY: I RECENTLY DROVE MY NEW 2021 TELLURIDE SX TO MY CABIN IN GA. AND FOUND A MAJOR ISSUE WITH THE HEADLIGHTS WHILE DRIVING THROUGH THE BACKWOODS. THE VISIBILITY USING THE LED HEADLIGHTS AND HIGH BEAMS ARE TERRIBLE AND POSE A DANGER. IF YOU ARE DRIVING DOWNHILL AND THE ROAD GOES UP OR TURNS YOU HAVE ZERO VISIBILITY, IT ACTUALLY CREATES A LINE AS IN MY PICTURE. I BROUGHT IT INTO MY KIA DEALER AND THEY SAID CORPORATE IS AWARE OF IT BUT THERE IS NO FIX AS OF YET SO THEY ADJUSTED THEM AS BEST THEY COULD. THIS IS EXTREMELY DANGEROUS AND PEOPLE WILL DIE IF THEY DO NOT GET A A FIX FOR THIS ISSUE.

2022 Kia Telluride

w. **DATE OF INCIDENT:** May 20, 2022

DATE COMPLAINT FILED: November 2, 2022

NHTSA/ODI ID: 11491918

SUMMARY: Headlights are NOT bright enough for night driving.

2021 Hyundai Palisade

x. **DATE OF INCIDENT:** July 13, 2020

DATE COMPLAINT FILED: August 2, 2022

NHTSA/ODI ID: 11477157

SUMMARY: Head lights -When driving in mountains (curves and going up and down hills) at night the head lights produced a shadow effect, which gave the impression it was on the windshield sight line. This shadow effect varied from 1/3 to 2/3 of the windshield which caused a distorted view of the road ahead. There were 4 adults in the car and all agreed that it was making the road dangerous to drive on. We had to slow down well below the actual speed limit which would cause cars coming around a curve behind us to quickly slow down or run into us. - Took car to Bronco Motors in Boise Id and explained the headlight issue they told us that one other person had come in complaining about this same issue. Their mechanic told us that there

1 is no way to adjust the headlights. -No warnings

2 y. **DATE OF INCIDENT:** December 22, 2021

3 **DATE COMPLAINT FILED:** March 2, 2021

4 **NHTSA/ODI ID:** 11444720

5 **SUMMARY:** The low beam headlights are too bright causing
6 vehicles in the opposite direction to flash their high beams thinking
7 that my high beams are on. This is a safety factor as I am often blinded
8 by other drivers who flash their high beams and in many cases keep
9 their high beams on. I've visited Palisade chat rooms and have found
10 that other drivers have the same complaint. I have contacted Hyundai
11 headquarters and reported the problem and have taken it to dealers
12 three times to have the low beams lowered. I have been told that the
13 low beam adjustment is correct and nothing can be done to fix my
14 problem. I believe this low beam problem is a design defect and should
15 be corrected. My vehicle is available for examination if necessary.

16 **Customer Complaints on Third-Party Websites**

17 87. Similarly, complaints posted by consumers in internet forums
18 demonstrate that the defect is widespread and dangerous and that it can manifest
19 without warning and/or suitable repair. The complaints also indicate Defendants'
20 awareness of the problems with the Headlight and how potentially dangerous the
21 defect is for consumers, not only to the extent such complaints reference contact
22 with authorized dealerships and Defendants themselves, but also because HMA
23 and KMA employ staff to monitor the perception of the brand. The following are
24 a sample of consumer complaints (spelling and grammar mistakes remain as found
25 in the original):

26 88. On tellurideforum.org, a consumer of a 2021 Kia Telluride posted the
27 following:

28 I have had my Telluride S 2021 since August and I am very
frustrated with the headlights at night. #1 I don't think the main
headlights beam high enough. When I go up a hill I must have
my brights on to adequately see in front of me. #2 I noticed a
complete blind spot when turning...At night if someone walked

1 in front of my car while I am turning I could never see them.
2 This is quite scary to me. Thought perhaps it is because I am
3 short but now I am reading that this is a common complaint with
4 this car. Now I read that the "fog lights" can help illuminate the
5 car when turning. Of course now I found out I don't have fog
6 lights in this car style. I hate to say this but if I had any inkling
7 of this problem would never have bought this car. It is very
8 dangerous.

9 89. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride
10 posted the following:

11 Hi. My telluride is less than a year old. I noticed the other night
12 that when I switch to high beams nothing changes. Low beams
13 work like they always have. Are they separate bulbs? Is this a
14 warranty issue? How hard is it to upgrade the lights. The
15 original sucks. It's a LX if that matters.

16 90. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride
17 posted the following:

18 We just got a Telluride EX a couple of weeks ago. We hadn't
19 driven it at night on dark roads until last night. It was dangerous
20 in our opinion. The light had a definite line that almost appeared
21 like a dark screen on the windshield. Upon stopping and looking
22 at the headlamps, I discovered that there is some kind of black
23 deflector on the bottom and top of the headlamp bulb. This
24 creates a "border" at the top of the light being shone on the road
25 and surroundings. Normal headlamps allow some light to shine
26 above this artificial border. I find this current lighting
27 dangerous.

28 91. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride

1 consumer posted the following:

2 High beam headlights on Kia Telluride stopped working, plus
3 when on low beam light projection is only about 20 yards.
4 Safety issue. Suggest contacting NHSTA for this issue. Kia
5 dealership cannot schedule appointment for a month.

6 92. On carproblemzoo.com, a 2020 Kia Telluride consumer posted the
7 following:

8 High beams will not function. Replaced light bulbs. Did not fix
9 the problem. Replaced relay and fuse. Did not fix the problem.
10 Took to dealer. Service tech appeared to be befuddled. His only
11 suggestion was to replace both headlight assemblies at a cost of
12 over \$2000. 00 or just wait until kia announced a recall as he
13 could not determine exact cause of problem.

14 93. On carproblemzoo.com, another consumer posted the following:

15 I love this car. I replaced my 2016 Lexus gl 460 with the 2020
16 Telluride ex v6, a low milage previously owned car I found at a
17 dealership because I felt it compared favorably in every way
18 with the Lexus, which I had bought new. Unfortunately, like
19 others who have complained about the same lighting issue, I did
20 not do a night time test drive of this car, but when I did finally
21 drive it at night - wow! the headlights on this vehicle are the
22 absolute worst I have ever experienced as a driver. My first
23 experience driving this kia after dark on a city street proved to
24 be dangerous and scary. Lighting was so poor- especially the
25 peripheral lighting and low beam height range - that I could not
26 find my destination because the house numbers on the
27 mailboxes as well as the street sign were not lit well enough to
28 read. But what was worse is that I very nearly hit a pedestrian

1 who was walking on the side of the road. By the way, my vision
2 is 20/20 and night driving has not previously been a problem. I
3 knew there had to be something wrong with the lighting system
4 so the next day I took the car straight to the dealer who checked
5 the bulbs and their placement; he found no problem. I am a
6 widow so I drive myself everywhere I go, including at night.
7 Bright, safe illumination is a must! I am not driving much at
8 night these days because I feel it is way too risky considering
9 the poor visibility after dark. I can tell you that Kia will have a
10 law suit (or multiple suits) on their hands when this poor
11 headlight situation is the cause of a serious accident!

12 94. On carproblemzoo.com, a 2021 Kia Telluride consumer posted the
13 following:

14 I recently drove my new 2021 Telluride SX to my cabin in GA.
15 And found a major issue with the headlights while driving
16 through the backwoods. The visibility using the LED headlights
17 and high beams are terrible and pose a danger. If you are driving
18 downhill and the road goes up or turns you have zero visibility,
19 it actually creates a line as in my picture. I brought it into my
20 Kia dealer and they said corporate is aware of it but there is no
21 fix as of yet so they adjusted them as best they could. This is
22 extremely dangerous and people will die if they do not get a
23 fix for this issue.

24 95. On carproblemzoo.com, a Hyundai Palisade consumer posted the
25 following:

26 head lights -when driving in mountains (curves and going up
27 and down hills) at night the head lights produced a shadow
28 effect, which gave the impression it was on the windshield sight

1 line. This shadow effect varied from 1/3 to 2/3 of the windshield
2 which caused a distorted view of the road ahead. There were 4
3 adults in the car and all agreed that it was making the road
4 dangerous to drive on. We had to slow down well below the
5 actual speed limit which would cause cars coming around a
6 curve behind us to quickly slow down or run into us. - took car
7 to bronco motors in boise id and explained the headlight issue
8 they told us that one other person had come in complaining
9 about this same issue. Their mechanic told us that there is no
10 way to adjust the headlights.

11 96. On carproblemzoo.com, a Hyundai Palisade consumer posted the
12 following:

13 The low beam headlights are too bright causing vehicles in the
14 opposite direction to flash their high beams thinking that my
15 high beams are on. This is a safety factor as I am often blinded
16 by other drivers who flash their high beams and in many cases
17 keep their high beams on. I've visited Palisade chat rooms and
18 have found that other drivers have the same complaint. I have
19 contacted Hyundai headquarters and reported the problem and
20 have taken it to dealers three times to have the low beams
21 lowered. I have been told that the low beam adjustment is
22 correct and nothing can be done to fix my problem. I believe
23 this low beam problem is a design defect and should be
24 corrected. My vehicle is available for examination if necessary.

25 97. On palisadeforums.org, a 2021 Hyundai Palisade consumer posted
26 the following:

27 The headlights on the 2021 Palisade are very dangerous at
28 night! You have a black blob on the road at all times and can

1 not see in the oncoming lane!

2 Very Dangerous and a law suit waiting to happen. Sad Hyundai

3 knows about this issue and has not changed their lighting!

4 **Defendants Had Superior and Exclusive Knowledge of the Headlight Defect**

5 98. Defendants had superior and exclusive knowledge of the Headlight
6 Defect and knew or should have known that the defect was not known or
7 reasonably discoverable by Plaintiffs and Class Members before they purchased
8 or leased the Class Vehicles.

9 99. Discovery will show that before Plaintiffs purchased his Class
10 Vehicle, and since at least 2019, Defendants knew about the Headlight Defect
11 through sources not available to consumers, including pre-release testing data,
12 early consumer complaints to Defendants and its dealers who are their agents for
13 vehicle repairs, consumer complaints regarding earlier model years equipped with
14 the same Headlight, testing conducted in response to those complaints, high failure
15 rates and replacement part sales data, consumer complaints to NHTSA (which
16 Defendants monitors), by developing TSBs in an effort to address the Headlight
17 Defect, and through other aggregate data from Defendants dealers about the
18 problem. TSBs are issued exclusively to Defendants' dealerships and service
19 providers and are not disseminated to consumers, even if their vehicles receive
20 services as outlined in the bulletins.

21 100. Defendants are experienced in the design and manufacture of
22 consumer vehicles. As an experienced manufacturer, Defendants conducts tests,
23 including pre-sale durability testing, on incoming components, including the
24 Headlight and Headlight Assembly, to verify the parts are free from defect and
25 align with Defendants' specifications. Thus, Defendants knew or should have
26 known the Headlight was defective and prone to putting drivers in a dangerous
27 position due to the inherent risks of the Headlight Defect.

28 101. Additionally, discovery will show that Defendants knew of the impact

1 of this defect from the sheer number of reports received from dealerships.
2 Defendants' customer relations department, which interacts with individual
3 dealerships to identify potential common defects, has received numerous reports
4 regarding the defect, which led to the release of TSBs and dealer communications.
5 Defendants' customer relations department also collects and analyzes field data
6 including, but not limited to, repair requests made at dealerships, technical reports
7 prepared by engineers who have reviewed vehicles for which warranty coverage
8 is being requested, parts sales reports, and warranty claims data.

9 102. Defendants' warranty department similarly analyzes and collects data
10 submitted by its dealerships to identify warranty trends in its vehicles. It is
11 Defendants' policy that when a repair is made under warranty the dealership must
12 provide Defendants with detailed documentation of the problem and a complete
13 disclosure of the repairs employed to correct it. Dealerships have an incentive to
14 provide detailed information to Defendants, because they will not be reimbursed
15 for any repairs unless the justification for reimbursement is sufficiently detailed.

16 103. Well before the first Class Vehicle was sold, as early as March 2010,
17 Defendants knew or should have known that the Headlights were defective in
18 design and/or manufacture and that the Defect would adversely affect the
19 drivability of the Class Vehicles and cause safety hazards, including collisions.
20 Defendants first began using Headlight Assembly components that were
21 vulnerable to improper moisture and humidity intrusion in its 2010 model year
22 vehicles.¹⁰

23 104. Indeed, beginning in March 2010, Kia first issued TSB No. BOD055
24 for all Kia models, ostensibly providing "Information for Headlamp Condensation
25 and Moisture." The TSB advises that "Headlamp assembly replacement WILL
26 NOT be necessary in most cases." However, it directs authorized dealership

27
28 ¹⁰ "Headlight Condensation TSB," March 12, 2010, available at: <https://www.kia-forums.com/threads/headlight-condensation-tsb.57749/> (last accessed November 14, 2022).

1 personnel to replace the headlamp assembly where there is improper “water
2 intrusion.”

3 105. In January 2019, Kia began “a Product Improvement Campaign to
4 adjust the headlamp aim” for certain Class Vehicles. This product improvement
5 campaign was conducted “to more precisely focus the headlamps on the correct
6 position on the roadway and reduce the glare from the headlamps to oncoming
7 traffic.” The communication to “All Kia Dealer Principals” regarding the product
8 improvement campaign states “The Insurance Institute for Highway Safety (IIHS)
9 is a well-known organization that conducts supplemental testing to evaluate
10 certain aspects of vehicle performance. As a result of such testing, Kia and IIHS
11 have determined that improvements could be made to adjust the headlamp aim to
12 improve the focus and reduce glare from the headlamps to oncoming traffic.” The
13 campaign was updated in January 2020. Discovery will show that the problem
14 persists despite this product improvement campaign and is a result of the Defect
15 as described herein.

16 106. In April 2019, Kia issued a service action, TSB No. SA380, for
17 “Telluride Headlamp Inspection.” The service action was issued to address
18 “intermittent or inoperative Daytime Running Lamp (DRL) at the headlamps due
19 to an internal connection fault.” The service action describes the headlight
20 inspection procedure and states “Leave the DRLs on for twenty minutes. If one or
21 both DRL(s) is/are not operating as designed, proceed to the Headlamp
22 Replacement Procedure below.” Discovery will show that the problem persists
23 despite headlight and headlight assembly replacement and is a result of the Defect
24 as described herein.

25 107. In June 2021, Kia issued TSB No. ELE242, regarding “Headlamp
26 Soft Connection Inspection.” The service action was issued to address
27 “inoperative/intermittently inoperative. . . low/sub-low beam on Telluride.” The
28 service action describes the headlight inspection procedure and states “If headlamp

1 does NOT operate normally (low beam or sub-low beam), replace the headlamp
2 with a new part.” Discovery will show that the problem persists despite headlight
3 and headlight assembly replacement and is a result of the Defect as described
4 herein.

5 108. In September 2021, Kia issued a significantly revised TSB No.
6 BOD055 (Rev 1) for certain Class Vehicles. The TSB was still titled “Information
7 for Headlamp Condensation and Moisture.” Specifically, the TSB was issued to
8 correct “failed headlamp assembly seals or gaskets,” resulting in excessive “water
9 intrusion.” The TSB directs dealership personnel to “locate the area of failure and
10 determine if it is repairable. In some cases, headlamp replacement will be
11 necessary.” Discovery will show that the problem persists despite headlight and
12 headlight assembly replacement and is a result of the Defect as described herein.

13 109. Similarly, in July 2017, Hyundai first issued a TSB for all Hyundai
14 models, ostensibly providing “Information for Lamp Condensation.” TSB No. 17-
15 BD-01 provided “information regarding headlamp and rear combination lamp
16 condensation related to moisture accumulation in the lens assembly.” The TSB
17 advises that, if moisture remains inside the headlight assembly after the directed
18 drying procedures, “further repairs need to be performed on the lamp to address
19 the condition.”

20 110. In July 2019, Hyundai superseded TSB No. 17-BD-01 with TSB No.
21 19-BD-003H for certain Class Vehicles. The TSB was titled “Information for
22 Headlamp and Rear Combination Lamp Condensation.” Specifically, the TSB was
23 issued to correct headlight problems caused by “water leak[s].” The TSB stated
24 that, “If water is collecting at the bottom of the headlamp assembly or the
25 condensation remains after the headlamps have been on for 30 minutes or more,
26 there may be a water leak in the assembly. The leak may be caused by a poor seal
27 between the headlamp housing and lens, cracks in the headlamp assembly, or poor
28 fitment. The condition should be diagnosed and repaired as necessary.” The only

1 repair procedure prescribed by the TSB for this condition was “replacement of the
2 head lamp assembly.” Discovery will show that the problem persisted despite the
3 advised repairs and TSB No. 20-BD-014H, issued in July 2020 for certain Class
4 Vehicles, updated this TSB with additional service information, and is a result of
5 the Defect as described herein.

6 111. Discovery will show that each TSB, product improvement campaign,
7 and service action issued by Defendants was approved by managers, directors,
8 and/or executives at Kia and Hyundai. Therefore, discovery will show that
9 Defendants’ managers, directors, and/or executives knew, or should have known,
10 about the Headlight Defect, but refused to disclose the Headlight Defect to
11 prospective purchasers and owners, and/or actively concealed the Headlight
12 Defect.

13 112. The existence of the Headlight Defect is a material fact that a
14 reasonable consumer would consider when deciding whether to purchase or lease
15 a Class Vehicle. Had Plaintiffs and other Class Members known of the Headlight
16 Defect, they would have paid less for the Class Vehicles or would not have
17 purchased or leased them.

18 113. Reasonable consumers, like Plaintiffs, expect that a vehicle’s
19 Headlights are safe, will function in a manner that will not pose a safety risk and
20 will illuminate the area in front of the vehicle adequately, and are free from
21 defects. Plaintiffs and Class Members further reasonably expect that Defendants
22 will not sell or lease vehicles with known safety defects, such as the Headlight
23 Defect, and will disclose any such defects to its consumers when it learns of them.
24 They did not expect Defendants to conceal and fail to disclose the Headlight
25 Defect to them, and to then continually deny its existence.

26 **Defendants Have Actively Concealed the Headlight Defect**

27 114. Despite their knowledge of the Headlight Defect in the Class
28 Vehicles, Defendants actively concealed the existence and nature of the defect

1 from Plaintiffs and Class Members. Specifically, Defendants failed to disclose or
2 actively concealed at and after the time of purchase, lease, or repair:

3 (a) any and all known material defects or material nonconformity
4 of the Class Vehicles, including the defects pertaining to the Headlights;

5 (b) that the Class Vehicles, including the Headlight, were not in
6 good working order, were defective, and were not fit for their intended
7 purposes; and

8 (c) that the Class Vehicles and their Headlights were defective,
9 despite the fact that Defendants learned of such defects as early as 2019, if
10 not earlier.

11 115. Discovery will show that when consumers present their Class
12 Vehicles to an authorized Defendants' dealer for Headlight repairs, rather than
13 repair the problem under warranty, Defendants' dealers either inform consumers
14 that their vehicles are functioning properly or conduct repairs that merely mask
15 the Headlight Defect such as attempting to reposition the lights even when the
16 headlights are dim rather than out of position. This includes Kia's Product
17 Improvement Campaign in 2019, which attempted to deflect from the root causes
18 of the Defect, namely defective seals which allow moisture and condensation to
19 intrude on the headlight assembly causing dim and failed headlights.

20 116. Defendants have caused Plaintiffs and Class Members to expend
21 money and/or time at their dealerships to diagnose, repair or replace the Class
22 Vehicles' Headlights and/or related components, despite Defendants' knowledge
23 of the Headlight Defect.

24 **Defendants Have Unjustly Retained a Substantial Benefit**

25 117. Discovery will show that Defendants unlawfully failed to disclose
26 the alleged defect to induce Plaintiffs and other putative Class Members to purchase
27 or lease the Class Vehicles.

28 118. Plaintiffs further allege that Defendants thus engaged in deceptive

1 acts or practices pertaining to all transactions involving the Class Vehicles,
2 including Plaintiffs’.

3 119. As discussed above, therefore, Plaintiffs alleges that Defendants
4 unlawfully induced him to purchase his Class Vehicle by concealing a material fact
5 (the defective Headlight) and that he would have paid less for the Class Vehicle, or
6 not purchased it at all, had he known of the defect.

7 120. Accordingly, Defendants’ ill-gotten gains, benefits accrued in the
8 form of increased sales and profits resulting from the material omissions that did -
9 and likely will continue to - deceive consumers, should be disgorged.

10 **The Agency Relationship regarding the Vehicle Warranties Between**
11 **Defendants HMA and KMA and their Authorized Dealers**

12 121. In order to sell vehicles to the general public, Defendants HMA and
13 KMA enter into agreements with their networks of authorized dealerships to
14 engage in retail sales with consumers such as Plaintiffs while also advertising the
15 warranties provided by HMA and KMA directly to consumers when they purchase
16 a Kia or Hyundai-branded vehicle from the authorized dealership. These
17 agreements specifically authorize the dealerships to act in HMA and KMA’s stead
18 to provide repairs under the warranties HMA and KMA provide directly to
19 consumers. Accordingly, discovery will show, particularly the dealership
20 agreements between Defendant HMA and KMA and third-party dealerships, that
21 Defendants HMA and KMA have authorized these dealerships to be their agents
22 for the purposes of warranty repairs, including diagnosis of whether warranty
23 repairs are required, and as such, the consumers are third-party beneficiaries of
24 these dealership agreements because they benefit from being able to purchase and
25 receive warranty repairs locally. Discovery will show that because Plaintiffs and
26 members of the Class are third-party beneficiaries of the dealership agreement
27 which create an implied warranty of merchantability of the goods being sold by
28

1 these authorized dealerships, they may avail themselves of the implied warranty
2 against Defendants. This is true because third-party beneficiaries to contracts
3 between other parties that create an implied warranty of merchantability may avail
4 themselves of the implied warranty. *See In re Toyota Motor Corp. Unintended*
5 *Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, 754 F. Supp. 2d 1145,
6 1185 (C.D. Cal. 2010).

7 122. Further, Plaintiffs and each of the members of the Class are the
8 intended beneficiaries of the express and implied warranties which accompany
9 each Class Vehicle. The dealers were not intended to be the ultimate consumers of
10 the Class Vehicles, and they have no rights under the warranty agreements provided
11 by HMA or KMA. These warranties were designed for and intended to benefit the
12 consumers only. The consumers are the true intended beneficiaries of the express
13 and implied warranties, and the consumers may therefore avail themselves of those
14 warranties.

15 123. HMA and KMA issued the express warranty to Plaintiffs and the
16 Class members. HMA and KMA also developed and disseminated the owner's
17 manuals and warranty booklets which direct consumers to take their vehicles to
18 authorized dealerships for diagnosis and repair. HMA and KMA also developed
19 and disseminated the advertisements such as vehicle brochures and television
20 commercials, and other promotional materials relating to the Class Vehicles and
21 promoting the terms of the warranties that they issue with the sale of each Class
22 Vehicle. HMA and KMA are also responsible for the content of the Monroney
23 Stickers on their vehicles. Because they issue the express warranties directly to the
24 consumers, the consumers are in direct privity with HMA and KMA with respect
25 to the warranties.

26 124. In promoting, selling, and repairing their defective vehicles,
27 Defendants act through numerous authorized dealers who act as, and represent
28 themselves to the public as exclusive Kia and Hyundai representatives and agents,

1 particularly for the purpose of providing repairs that are the responsibility of HMA
2 and KMA to provide under their respective warranties. That the dealers act as
3 Defendants' agents for this purpose is demonstrated by the following facts:

4 (a) The authorized dealerships complete all service and repair
5 according to instructions disseminated directly to them by HMA and/or
6 KMA, including service manuals, technical service bulletins ("TSBs"),
7 technical tips ("TT"), and other documents drafted by HMC and/or KMC;

8 (b) Technicians at Defendants dealerships are required to go to at
9 least yearly KMA and HMA-given trainings in order to remain certified to
10 work on Kia and Hyundai-branded vehicles, at which they receive training
11 on proprietary systems, which provides guided, step-by-step instructions on
12 diagnosing and repairing Kia and Hyundai-branded vehicles;

13 (c) Consumers are able to receive services under Kia and
14 Hyundai's issued New Vehicle Limited Warranties only at authorized
15 dealerships, and they are able to receive these services because of the
16 agreements between HMA and KMA and the authorized dealers. These
17 agreements provide HMA and/or KMA with a significant amount of control
18 over the actions of the authorized dealerships;

19 (d) The warranties provided by HMA and/or KMA for the
20 defective vehicles direct consumers to take their vehicles to authorized
21 dealerships for repairs or services; (e) HMA and KMA control the
22 way in which their authorized dealers can respond to complaints and
23 inquiries concerning defective vehicles, and the dealerships are able to
24 perform repairs under warranty only with HMA or KMA's authorization;

25 (f) HMA and KMA have entered into agreements and
26 understandings with their authorized dealers pursuant to which they
27 authorize and exercise substantial control over the operations of their
28 dealers and the dealers' interaction with the public, particularly the

1 advertising of the Class Vehicles, specifically the terms and conditions of
2 the express warranties, as well as how consumers may avail themselves of
3 the remedies under those express warranties; and

4 (g) HMA and KMA implemented their express and implied
5 warranties as they relate to the defects alleged herein by instructing
6 authorized Kia and Hyundai dealerships to address complaints of the Defect
7 by prescribing and implementing the relevant TSBs cited herein.

8 125. Indeed, HMA's and KMA's warranty booklets make it abundantly
9 clear that only their authorized dealerships are their agents for warranty service.
10 The booklets, which are plainly written for the consumers, not the dealerships, tell
11 consumers that to obtain warranty service, "You must take your Kia Vehicle, along
12 with this manual, to an Authorized Kia Dealer in the United States during its
13 normal service hours.," (Kia Warranty); and "[w]arranty service will be provided
14 by an authorized Hyundai Dealership without charge for parts or labor." (Hyundai
15 Warranty).

16 126. Accordingly, as the above paragraphs demonstrate, the authorized
17 dealerships are agents of Defendants for the purposes of the warranties, which are
18 direct contracts between HMA, KMA, and the purchasers of their branded vehicles.
19 Plaintiffs and each of the members of the Class have had sufficient direct dealings
20 with either HMA, KMA, or their agent dealerships to establish privity of contract
21 between HMA or KMA, on one hand, and Plaintiffs and each of the members of
22 the Class, on the other hand. This establishes privity with respect to the express and
23 implied warranty between Plaintiffs and Defendants. It also establishes that
24 Plaintiffs were dealing with Defendants through their authorized agent dealerships
25 when they were given the New Vehicle Limited Warranty associated with their
26 vehicles, without any ability to negotiate the terms of that Warranty.

27 **Defendants' Warranties were Unconscionable**

28 127. Plaintiffs signed contracts for sale with Defendants' authorized

1 dealers, and with that sale, was presented with a separate Warranty as drafted by
2 KMA and/or HMA. While Plaintiffs have some ability to negotiate price of the
3 vehicle, they have no ability to negotiate the terms of the Warranty. Plaintiffs had
4 no bargaining power with respect to the Warranty, were presented with it as a *fait*
5 *accompli*, and had to accept it in the exact form in which it was presented to them,
6 which occurred after the vehicle purchase transaction was completed. Plaintiffs had
7 no meaningful choice regarding any aspect of the Warranty or its terms, including
8 durational limitations of time and mileage. The terms of the warranty unreasonably
9 favored HMA or KMA over Plaintiffs and the members of the Class; a gross
10 disparity in bargaining power existed as between HMA and KMA and Class
11 members; and HMA and KMA knew or should have known that the Headlight
12 Defect would manifest in the Class Vehicles both before and after the Warranty,
13 thereby rendering the time and mileage limitations insufficient, inadequate, and
14 unconscionable.

15 128. HMA and KMA drafted the terms of the Warranty in part by using
16 their exclusive, superior knowledge of the existence and likely manifestation of the
17 Defect. Plaintiffs and Class Members were entirely ignorant of the Defect when
18 purchasing their Vehicles and when presented with the Warranty. Plaintiffs'
19 acceptance of the Warranty and its terms, including any disclaimers or durational
20 limits, was neither knowing nor voluntary. HMA and KMA knew or should have
21 known at the time of sale that the Class Vehicles were defective and would fail
22 prematurely solely because of a defect in design, materials, and workmanship, to
23 wit, the Headlight Defect. Plaintiffs and Class Members, on the other hand, had no
24 notice of or ability to detect the Defect prior to purchasing the Class Vehicles. For
25 this reason, the terms of the Warranty unreasonably favored HMA and KMA over
26 Plaintiffs and Class Members, and Plaintiffs' and Class Members' acceptance of
27 the Warranty's durational limitations, to the extent they are found to apply so as to
28 exclude instances where the Defect manifested outside of them, was neither

1 knowing nor voluntary, thereby rendering such limitation unconscionable and
2 ineffective.

3 129. Defendants' exclusive superior knowledge of the existence of the
4 Defect and when it would manifest influenced its analysis of the Defect and
5 whether it should pay for a recall (*i.e.*, if a defect is more likely to manifest within
6 the durational limits, a recall is only fractionally more expensive than warranty
7 repairs; if it is more likely to manifest outside those limits, a recall is exponentially
8 more expensive than warranty repairs.)

9 130. Plaintiffs were also not aware and could not have been aware that
10 HMA and KMA would willfully not inform them of the Defect which affects the
11 safety of their vehicles and that the Defect could manifest outside of the durational
12 limit of the Warranty, despite Defendants' knowledge of this. *See Carlson v. Gen.*
13 *Motors Corp.*, 883 F.2d 287 (4th Cir. 1989), cert. denied, 495 U.S. 904 (1990)
14 (““proof that GM knew of and failed to disclose major, inherent product defects
15 would obviously suggest that its imposition of the challenged ‘durational
16 limitations’ on implied warranties constituted ‘overreaching,’ and that the
17 disclaimers themselves were therefore ‘unconscionable.’”)

18 **TOLLING OF THE STATUTES OF LIMITATIONS**

19 131. Any applicable statute of limitations has been tolled by Defendants'
20 knowing and active concealment of the Headlight Defect and misrepresentations
21 and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and
22 members of the Class were deceived regarding the Class Vehicles and could not
23 reasonably discover the Defect or Defendants' deception with respect to the Defect.
24 Defendants and its agents continue to deny the existence and extent of the Defect,
25 even when questioned by Plaintiffs and members of the Class.

26 132. Plaintiffs and members of the Class did not discover and did not know
27 of any facts that would have caused a reasonable person to suspect that Defendants
28 were concealing a defect and/or the Class Vehicles contained the Headlight Defect

1 and the corresponding safety risk. As alleged herein, the existence of the Headlight
2 Defect was material to Plaintiffs and members of the Class at all relevant times.
3 Within the time period of any applicable statutes of limitations, Plaintiffs and
4 members of the Class could not have discovered through the exercise of reasonable
5 diligence the existence of the Defect or that the Defendants were concealing the
6 Defect.

7 133. At all times, Defendants are and were under a continuous duty to
8 disclose to Plaintiffs and members of the Class the true standard, quality, and grade
9 of the Class Vehicles and to disclose the Headlight Defect and corresponding safety
10 risk due to their exclusive and superior knowledge of the existence and extent of
11 the Headlight in Class Vehicles.

12 134. Defendants knowingly, actively, and affirmatively concealed the
13 facts alleged herein. Plaintiffs and members of the Class reasonably relied on
14 Defendants' knowing, active, and affirmative concealment.

15 135. For these reasons, all applicable statutes of limitation have been tolled
16 based on the discovery rule and Defendants' fraudulent concealment, and
17 Defendants are estopped from relying on any statutes of limitations in defense of
18 this action.

19 CLASS ACTION ALLEGATIONS

20 136. Plaintiffs bring this lawsuit as a class action on behalf of themselves
21 and all others similarly situated as members of the proposed Class pursuant to
22 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
23 numerosity, commonality, typicality, adequacy, predominance, and superiority
24 requirements of those provisions.

25 137. The Class and Sub-Classes are defined as:

26
27 **Class:** All persons and entities in the United States who
28 purchased or leased a Class Vehicle (the "Nationwide
Class" or "Class").

1 **Minnesota Sub-Class:** All persons and entities who
2 purchased or leased a Class Vehicle in the State of
3 Minnesota.

4 **South Carolina Sub-Class:** All persons and entities
5 who purchased or leased a Class Vehicle in the State of
6 South Carolina.

7 138. Excluded from the Class and Sub-Classes are: (1) Defendants, any
8 entity or division in which Defendants have a controlling interest, and their legal
9 representatives, officers, directors, assigns, and successors; (2) the Judge to whom
10 this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding
11 state and/or federal court system who may hear an appeal of any judgment entered;
12 and (4) those persons who have suffered personal injuries as a result of the facts
13 alleged herein. Plaintiffs reserves the right to amend the Class and Sub-Class
14 definitions if discovery and further investigation reveal that the Class and Sub-
15 Classes should be expanded or otherwise modified.

16 139. Numerosity: Although the exact number of Class Members is
17 uncertain, and can only be ascertained through appropriate discovery, the number
18 is significant enough such that joinder is impracticable. The disposition of the
19 claims of these Class Members in a single action will provide substantial benefits
20 to all parties and to the Court. The Class Members are readily identifiable from
21 information and records in Defendants' possession, custody, or control, as well as
22 from records kept by the Department of Motor Vehicles.

23 140. Typicality: Plaintiffs' claims are typical of the claims of the Class in
24 that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
25 designed, manufactured, and distributed by Defendants. The representative
26 Plaintiffs, like all Class Members, has been damaged by Defendants' misconduct
27 in that they have incurred or will incur the cost of repairing or replacing the
28 defective Headlight and/or its components. Furthermore, the factual bases of
29 Defendants' misconduct are common to all Class Members and represent a
30 common thread resulting in injury to the Class.

1 141. Commonality: There are numerous questions of law and fact
2 common to Plaintiffs and the Class that predominate over any question affecting
3 Class Members individually. These common legal and factual issues include the
4 following:

5 (a) Whether Class Vehicles suffer from defects relating to the
6 Headlight;

7 (b) Whether the defects relating to the Headlight constitute an
8 unreasonable safety risk;

9 (c) Whether Defendants knew about the defects pertaining to the
10 Headlight and, if so, how long Defendants have known of the defect;

11 (d) Whether the defective nature of the Headlight constitutes a
12 material fact;

13 (e) Whether Defendants have had an ongoing duty to disclose the
14 defective nature of the Headlight to Plaintiffs and Class Members;

15 (f) Whether Plaintiffs and the other Class Members are entitled to
16 equitable relief, including a preliminary and/or a permanent
17 injunction;

18 (g) Whether Defendants knew or reasonably should have known of
19 the defects pertaining to the Headlight before they sold and leased
20 Class Vehicles to Class Members;

21 (h) Whether Defendants should be declared financially responsible
22 for notifying the Class Members of problems with the Class Vehicles
23 and for the costs and expenses of repairing and replacing the
24 defective Headlight and/or its components;

25 (i) Whether Defendants are obligated to inform Class Members of
26 their right to seek reimbursement for having paid to diagnose, repair,
27 or replace their defective Headlight and/or its components;

28 (j) Whether Defendants breached the implied warranty of

1 merchantability pursuant to the Magnuson-Moss Warranty Act;

2 (k) Whether Defendants breached the implied warranty of
3 merchantability under Minnesota law;

4 (l) Whether Defendants breached their express warranties under
5 Minnesota Law; and

6 (m) Whether Defendants breached express warranties pursuant to the
7 Magnuson-Moss Warranty Act.

8 142. Adequate Representation: Plaintiffs will fairly and adequately
9 protect the interests of the Class Members. Plaintiffs has retained attorneys
10 experienced in the prosecution of class actions, including consumer and product
11 defect class actions, and Plaintiffs intends to vigorously prosecute this action.

12 143. Predominance and Superiority: Plaintiffs and Class Members have
13 all suffered, and will continue to suffer, harm and damages as a result of
14 Defendants' unlawful and wrongful conduct. A class action is superior to other
15 available methods for the fair and efficient adjudication of the controversy. Absent
16 a class action, most Class Members would likely find the cost of litigating their
17 claims prohibitively high and would therefore have no effective remedy. Because
18 of the relatively small size of the individual Class Members' claims, it is likely
19 that only a few Class Members could afford to seek legal redress for Defendants'
20 misconduct. Absent a class action, Class Members will continue to incur damages,
21 and Defendants' misconduct will continue unabated without remedy or relief.
22 Class treatment of common questions of law and fact would also be a superior
23 method to multiple individual actions or piecemeal litigation in that it will
24 conserve the resources of the courts and the litigants and promote consistency and
25 efficiency of adjudication.

FIRST CAUSE OF ACTION

Violations of the Minnesota Prevention of Consumer Fraud Act,

Minn. Stat. § 325F.68, *et seq.*

(On Behalf of the Minnesota Sub-Class)

144. Plaintiffs incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

145. Plaintiff Maranda (“Minnesota Plaintiff”) brings this cause of action individually and on behalf of the Minnesota Sub-Class.

146. The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat. § 325F.68.

147. The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby” Minn. Stat. § 3 25F.69(1). Defendants engaged in unfair and deceptive practices that violated the Minnesota CFA as described above.

148. Defendants participated in and engaged in deceptive business or trade practices prohibited by the Minnesota CFA by failing to disclose and actively concealing that the Class Vehicles contained the Headlight Defect, by marketing their Class Vehicles as safe and of high quality, and by presenting themselves as reputable manufacturers that valued safety and stood behind their vehicles after they were sold.

149. Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale or lease of the Class Vehicles by, among other things, failing to disclose the Headlight Defect; concealing the Headlight Defect; promoting and selling or leasing Class Vehicles they knew were defective, including by marketing their vehicles as safe, reliable, easily operable, efficient,

1 and of high quality; presenting themselves as reputable manufacturers that valued
2 safety, reliability, performance and efficiency, and stood behind their vehicles
3 after they were sold; failing to make repairs or making repairs and providing
4 replacements that caused Minnesota Plaintiff and the Minnesota Sub-Class
5 Members to experience repeated instances of failure, rendering the New Vehicle
6 Limited Warranty useless; and minimizing the scope and severity of the problems
7 with the Class Vehicles, refusing to acknowledge that they are defective, and
8 failing to provide adequate relief to consumers. Defendants misrepresented and
9 omitted such material facts with the intent to mislead Minnesota Plaintiff and the
10 Minnesota Sub-Class Members about the true nature of the Class Vehicles.

11 150. Defendants systematically misrepresented, concealed, suppressed, or
12 omitted material facts relating to the Class Vehicles and Headlight Defect in the
13 course of their business.

14 151. Defendants also engaged in unlawful trade practices by employing
15 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
16 suppression or omission of any material fact with intent that others rely upon such
17 concealment, suppression or omission, in connection with the sale of the Class
18 Vehicles.

19 152. Defendants' unfair and deceptive acts or practices occurred
20 repeatedly in Defendants' trade or business, were capable of deceiving a
21 substantial portion of the purchasing public, and imposed a serious safety risk on
22 the public.

23 153. Defendants knew that the Class Vehicles and their engines suffered
24 from an inherent defect, were defectively designed or manufactured, and were not
25 suitable for their intended use.

26 154. Defendants knew or should have known that their conduct violated
27 the Minnesota CFA.

28 155. Minnesota Plaintiff and the Minnesota Sub-Class Members

1 reasonably relied on Defendants' misrepresentations and omissions of material
2 facts in their advertisements of the Class Vehicles and in the purchase of the Class
3 Vehicles.

4 156. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
5 way of discerning that Defendants' misrepresentations were false and misleading
6 when they acquired their Class Vehicles because Minnesota Plaintiff and the
7 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
8 superior knowledge about the Class Vehicles' design and the Headlight Defect.

9 157. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
10 known that the Class Vehicles would contain and/or exhibit the Headlight Defect,
11 they would not have purchased or leased the Class Vehicles or would have paid
12 less for them. Plaintiffs did not receive the benefit of their bargain as a result of
13 Defendants' misconduct.

14 158. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
15 Members a duty to disclose the truth about the Headlight Defect because
16 Defendants:

17 a. possessed exclusive and superior knowledge of the design and
18 manufacture of the Class Vehicles and the Headlight Defect;

19 b. intentionally concealed the foregoing from Minnesota Plaintiff
20 and the Minnesota Sub-Class Members; and/or

21 c. made incomplete representations regarding the quality and
22 durability of the Class Vehicles, while purposefully withholding material facts from
23 Minnesota Plaintiff and the Minnesota Sub-Class Members that contradicted these
24 representations.

25 159. Due to Defendants' specific and superior knowledge that the Engines
26 in the Class Vehicles will fail due to the Headlight Defect, their false
27 representations regarding the increased durability of the Class Vehicles, and
28 reliance by Minnesota Plaintiff and the Minnesota Sub-Class Members on these

1 material representations, Defendants had a duty to disclose to Class members that
2 the Headlight Defect will cause engine failure in Class Vehicles, that Class
3 Vehicles do not have the expected durability, reliability, and/or safety over other
4 vehicles or of their predecessor engines, that failure of the Engines will cause
5 damage to Class Vehicle, and that Class members would be required to bear the
6 cost of the damage to their vehicles. Having volunteered to provide information to
7 Minnesota Plaintiff and the Minnesota Sub-Class Members, Defendants had the
8 duty to disclose not just the partial truth, but the entire truth. These omitted and
9 concealed facts were material because they directly impact the value of the Class
10 Vehicles purchased or leased by Minnesota Plaintiff and the Minnesota Sub-Class
11 Members. Longevity, durability, performance, and safety are material concerns to
12 Defendants consumers. Defendants represented to Minnesota Plaintiff and the
13 Minnesota Sub-Class Members that they were purchasing or leasing vehicles that
14 were durable, reliable, safe, efficient, of high quality, and containing engines of
15 advanced and superior characteristics and technology as alleged throughout this
16 Complaint, when in fact it is only a matter of time before the engines fail due to
17 the Headlight Defect.

18 160. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
19 injury in fact to a legally protected interest. As a result of Defendants' conduct,
20 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and
21 suffered actual damages in the form of the costs of diagnosis and repair of their
22 vehicles, and the diminished value of their vehicles.

23 161. As a direct and proximate result of Defendants' unfair or deceptive
24 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
25 suffered and will continue to suffer injury in fact and/or actual damages.

26 162. Defendants' violations present a continuing risk to Minnesota
27 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
28 Defendants' unlawful acts and practices complained of herein affect the public

1 interest.

2 163. As a proximate and direct result of Defendants' unfair and deceptive
3 trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class
4 purchased or leased Class Vehicles and suffered an ascertainable loss and financial
5 harm. These ascertainable losses include, among other things, overpayment at the
6 time of purchase or lease, the cost to repair the Headlight Defect, replacement of
7 the damaged related system components, diminution of Class Vehicle resale value,
8 increased repair and maintenance costs, and other substantial monetary damages
9 and inconvenience.

10 164. As a direct and proximate result of Defendants' unfair or deceptive
11 acts or practices alleged herein, Minnesota Plaintiff and other members of the
12 Minnesota Sub-Class suffered and will continue to suffer actual damages and are
13 entitled to recover actual damages to the extent permitted by law, including class
14 action rules, in an amount to be proven at trial. In addition, Minnesota Plaintiff
15 and the putative Class seek equitable and injunctive relief against Defendants on
16 terms that the Court considers reasonable, and reasonable attorneys' fees.

17 165. Minnesota Plaintiff provided notice of his claims by letter dated
18 December 1, 2022.

19 166. Pursuant to Minn. Stat. § 8.31(3a), Minnesota Plaintiff and the
20 Minnesota Sub-Class Members seek damages in an amount to be proven at trial,
21 including but not limited to actual damages and attorneys' fees, under the
22 Minnesota CFA.

23 167. Minnesota Plaintiff and the Minnesota Sub-Class Members also seek
24 punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing
25 evidence that Defendants' acts show deliberate disregard for the rights or safety
26 of others.

SECOND CAUSE OF ACTION

Violations of the Minnesota Deceptive Trade Practices Act,

Minn. Stat. § 325D.43-48, *et seq.*

(On Behalf of the Minnesota Sub-Class)

168. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

169. Minnesota Plaintiff brings this cause of action individually and on behalf of the Minnesota Sub-Class.

170. The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat. § 325F.68.

171. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits deceptive trade practices, which occur when a person “(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;” “(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(9) advertises goods or services with intent not to sell them as advertised.” Minn. Stat. § 325D.44. Defendants engaged in unfair and deceptive practices that violated the Minnesota DTPA as described above.

172. Defendants participated in and engaged in deceptive business or trade practices prohibited by the Minnesota DTPA by failing to disclose and actively concealing that the Class Vehicles contained the Headlight Defect, by marketing their Class Vehicles as safe and of high quality, and by presenting themselves as reputable manufacturers that valued safety and stood behind their vehicles after they were sold.

173. Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale or lease of the Class Vehicles by, among

1 other things, failing to disclose the Headlight Defect; concealing the Headlight
2 Defect; promoting and selling or leasing Class Vehicles they knew were defective,
3 including by marketing their vehicles as safe, reliable, easily operable, efficient,
4 and of high quality; presenting themselves as reputable manufacturers that valued
5 safety, reliability, performance and efficiency, and stood behind their vehicles
6 after they were sold; by failing to make repairs or making repairs and providing
7 replacements that caused Minnesota Plaintiff and the Minnesota Sub-Class
8 Members to experience repeated instances of failure, rendering the New Vehicle
9 Limited Warranty useless; and minimizing the scope and severity of the problems
10 with the Class Vehicles, refusing to acknowledge that they are defective, and
11 failing to provide adequate relief to consumers. Defendants misrepresented and
12 omitted such material facts with the intent to mislead Minnesota Plaintiff and the
13 Minnesota Sub-Class Members about the true nature of the Class Vehicles.

14 174. Defendants systematically misrepresented, concealed, suppressed, or
15 omitted material facts relating to the Class Vehicles and Headlight Defect in the
16 course of their business.

17 175. Defendants also engaged in unlawful trade practices by employing
18 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
19 suppression, or omission of any material fact with intent that others rely upon such
20 concealment, suppression, or omission, in connection with the sale of the Class
21 Vehicles.

22 176. Defendants' unfair and deceptive acts or practices occurred
23 repeatedly in Defendants' trade or business, were capable of deceiving a
24 substantial portion of the purchasing public, and imposed a serious safety risk on
25 the public.

26 177. Defendants knew that the Class Vehicles and their Headlights
27 suffered from an inherent defect, were defectively designed or manufactured, and
28 were not suitable for their intended use.

1 178. Defendants knew or should have known that their conduct violated
2 the Minnesota DTPA.

3 179. Minnesota Plaintiff and the Minnesota Sub-Class Members
4 reasonably relied on Defendants' misrepresentations and omissions of material
5 facts in their advertisements of the Class Vehicles and in the purchase of the Class
6 Vehicles.

7 180. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
8 way of discerning that Defendants' misrepresentations were false and misleading
9 when they acquired their Class Vehicles because Minnesota Plaintiff and the
10 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
11 superior knowledge about the Class Vehicles' design and the Headlight Defect.

12 181. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
13 known that the Class Vehicles would contain and/or exhibit the Headlight Defect,
14 they would not have purchased or leased the Class Vehicles or would have paid
15 less for them. Plaintiffs did not receive the benefit of their bargain as a result of
16 Defendants' misconduct.

17 182. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
18 Members a duty to disclose the truth about the Headlight Defect because
19 Defendants:

- 20 a. possessed exclusive and superior knowledge of the design and
21 manufacture of the Class Vehicles and the Headlight Defect;
22 b. intentionally concealed the foregoing from Minnesota Plaintiff
23 and the Minnesota Sub-Class Members; and/or
24 c. made incomplete representations regarding the quality and
25 durability of the Class Vehicles, while purposefully withholding
26 material facts from Minnesota Plaintiff and the Minnesota Sub-
27 Class Members that contradicted these representations.

28 183. Due to Defendants' specific and superior knowledge that the

1 Headlights in the Class Vehicles will fail due to the Headlight Defect, their false
2 representations regarding the increased durability and safety of the Class Vehicles,
3 and reliance by Minnesota Plaintiff and the Minnesota Sub-Class Members on
4 these material representations, Defendants had a duty to disclose to Class members
5 that the Headlight Defect will cause Headlight failure in Class Vehicles, that Class
6 Vehicles do not have the expected durability, reliability, and/or safety over other
7 vehicles, that failure of the Headlights will cause damage to Class Vehicles, and
8 that Class members would be required to bear the cost of the damage to their
9 vehicles. Having volunteered to provide information to Minnesota Plaintiff and
10 the Minnesota Sub-Class Members, Defendants had the duty to disclose not just
11 the partial truth, but the entire truth. These omitted and concealed facts were
12 material because they directly impact the value of the Class Vehicles purchased or
13 leased by Minnesota Plaintiff and the Minnesota Sub-Class Members. Longevity,
14 durability, performance, and safety are material concerns to Defendants
15 consumers. Defendants represented to Minnesota Plaintiff and the Minnesota Sub-
16 Class Members that they were purchasing or leasing vehicles that were durable,
17 reliable, safe, efficient, and of high quality as alleged throughout this Complaint,
18 when in fact it is only a matter of time before the Headlights fail due to the
19 Headlight Defect.

20 184. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
21 injury in fact to a legally protected interest. As a result of Defendants' conduct,
22 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and
23 suffered actual damages in the form of the costs of diagnosis and repair of their
24 vehicles, and the diminished value of their vehicles.

25 185. As a direct and proximate result of Defendants' unfair or deceptive
26 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
27 suffered and will continue to suffer injury in fact and/or actual damages.

28 186. Defendants' violations present a continuing risk to Minnesota

1 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
 2 Defendants' unlawful acts and practices complained of herein affect the public
 3 interest.

4 187. As a proximate and direct result of Defendants' unfair and deceptive
 5 trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class
 6 purchased or leased Class Vehicles and suffered an ascertainable loss and financial
 7 harm. These ascertainable losses include, among other things, overpayment at the
 8 time of purchase or lease, the cost to attempt to repair the Headlight Defect,
 9 replacement of the damaged related system components, diminution of Class
 10 Vehicle resale value, increased repair and maintenance costs, and other substantial
 11 monetary damages and inconvenience.

12 188. Minnesota Plaintiff provided notice of his claims by letter dated
 13 December 1, 2022.

14 189. Pursuant to Minn. Stat. §§ 8.31(3a) and 325D.45, Minnesota Plaintiff
 15 and the Minnesota Sub-Class Members seek damages in an amount to be proven
 16 at trial, including but not limited to actual damages and attorneys' fees, under the
 17 Minnesota DTPA.

18 190. Minnesota Plaintiff and the Minnesota Sub-Class Members also seek
 19 punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing
 20 evidence that Defendants' acts show deliberate disregard for the rights or safety
 21 of others.

22 **THIRD CAUSE OF ACTION**

23 **Violations of the Minnesota False Statement in Advertising Act,**

24 **Minn. Stat. § 325F.67, *et seq.***

25 **(On Behalf of the Minnesota Sub-Class)**

26 191. Plaintiffs incorporates by reference the allegations contained in the
 27 preceding paragraphs of this Complaint.

28 192. Minnesota Plaintiff brings this cause of action individually and on

1 behalf of the Minnesota Sub-Class.

2 193. The Minnesota False Statement in Advertising Act (“Minnesota
3 FSAA”) prohibits “any material assertion, representation, or statement of fact
4 which is untrue, deceptive, or misleading” in connection with the disposition of
5 merchandise or services. Minn. Stat. Ann. § 325F.67. Defendants engaged in
6 unfair and deceptive practices that violated the Minnesota FSAA as described
7 above.

8 194. Defendants participated in and engaged in deceptive business or trade
9 practices prohibited by the Minnesota FSAA by failing to disclose and actively
10 concealing that the Class Vehicles contained the Headlight Defect, by marketing
11 their Class Vehicles as safe and of high quality, and by presenting themselves as
12 a reputable manufacturer that valued safety and stood behind their vehicles after
13 they were sold.

14 195. Defendants knowingly and intentionally misrepresented and omitted
15 material facts in connection with the sale or lease of the Class Vehicles by, among
16 other things, failing to disclose the Headlight Defect; concealing the Headlight
17 Defect; promoting and selling or leasing Class Vehicles it knew were defective,
18 including by marketing their vehicles as safe, reliable, easily operable, efficient,
19 and of high quality; presenting themselves as reputable manufacturers that valued
20 safety, reliability, performance and efficiency, and stood behind their vehicles
21 after they were sold; failing to make repairs or making repairs and providing
22 replacements that caused Minnesota Plaintiff and the Minnesota Sub-Class
23 Members to experience repeated instances of failure, rendering the New Vehicle
24 Limited Warranty useless; and minimizing the scope and severity of the problems
25 with the Class Vehicles, refusing to acknowledge that they are defective, and
26 failing to provide adequate relief to consumers. Defendants misrepresented and
27 omitted such material facts with the intent to mislead Minnesota Plaintiff and the
28 Minnesota Sub-Class Members about the true nature of the Class Vehicles.

1 196. Defendants systematically misrepresented, concealed, suppressed, or
2 omitted material facts relating to the Class Vehicles and Headlight Defect in the
3 course of their business.

4 197. Defendants also engaged in unlawful trade practices by employing
5 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
6 suppression, or omission of any material fact with intent that others rely upon such
7 concealment, suppression, or omission, in connection with the sale of the Class
8 Vehicles.

9 198. Defendants' unfair and deceptive acts or practices occurred
10 repeatedly in Defendants' trade or business, were capable of deceiving a
11 substantial portion of the purchasing public, and imposed a serious safety risk on
12 the public.

13 199. Defendants knew that the Class Vehicles and their Headlights
14 suffered from an inherent defect, were defectively designed or manufactured, and
15 were not suitable for their intended use.

16 200. Defendants knew or should have known that their conduct violated
17 the Minnesota FSAA.

18 201. Minnesota Plaintiff and the Minnesota Sub-Class Members
19 reasonably relied on Defendants' misrepresentations and omissions of material
20 facts in their advertisements of the Class Vehicles and in the purchase of the Class
21 Vehicles.

22 202. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
23 way of discerning that Defendants' misrepresentations were false and misleading
24 when they acquired their Class Vehicles because Minnesota Plaintiff and the
25 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
26 superior knowledge about the Class Vehicles' design and the Headlight Defect.

27 203. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
28 known that the Class Vehicles would contain and/or exhibit the Headlight Defect,

1 they would not have purchased or leased the Class Vehicles or would have paid
2 less for them. Plaintiffs did not receive the benefit of their bargain as a result of
3 Defendants' misconduct.

4 204. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
5 Members a duty to disclose the truth about the Headlight Defect because
6 Defendants:

7 a. possessed exclusive and superior knowledge of the design and
8 manufacture of the Class Vehicles and the Headlight Defect;

9 b. intentionally concealed the foregoing from Minnesota Plaintiff
10 and the Minnesota Sub-Class Members; and/or

11 c. made incomplete representations regarding the quality and
12 durability of the Class Vehicles, while purposefully withholding material facts from
13 Minnesota Plaintiff and the Minnesota Sub-Class Members that contradicted these
14 representations.

15 205. Due to Defendants' specific and superior knowledge that the
16 Headlights in the Class Vehicles will fail due to the Headlight Defect, their false
17 representations regarding the increased durability of the Class Vehicles, and
18 reliance by Minnesota Plaintiff and the Minnesota Sub-Class Members on these
19 material representations, Defendants had a duty to disclose to Class members that
20 the Headlight Defect will cause Headlight failure in Class Vehicles, that Class
21 Vehicles do not have the expected durability, reliability, and/or safety over other
22 vehicles or of their predecessor Headlights, that failure of the Headlights will
23 cause damage to Class Vehicle, and that Class members would be required to bear
24 the cost of the damage to their vehicles. Having volunteered to provide
25 information to Minnesota Plaintiff and the Minnesota Sub-Class Members,
26 Defendants had the duty to disclose not just the partial truth, but the entire truth.
27 These omitted and concealed facts were material because they directly impact the
28 value of the Class Vehicles purchased or leased by Minnesota Plaintiff and the

1 Minnesota Sub-Class Members. Longevity, durability, performance, and safety
2 are material concerns to Defendants consumers. Defendants represented to
3 Minnesota Plaintiff and the Minnesota Sub-Class Members that they were
4 purchasing or leasing vehicles that were durable, reliable, safe, efficient, and of
5 high quality, when in fact it is only a matter of time before the Headlights fail due
6 to the Headlight Defect.

7 206. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
8 injury in fact to a legally protected interest. As a result of Defendants' conduct,
9 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and
10 suffered actual damages in the form of the costs of diagnosis and repair of their
11 vehicles, and the diminished value of their vehicles.

12 207. As a direct and proximate result of Defendants' unfair or deceptive
13 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
14 suffered and will continue to suffer injury in fact and/or actual damages.

15 208. Defendant's violations present a continuing risk to Minnesota
16 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
17 Defendant's unlawful acts and practices complained of herein affect the public
18 interest.

19 209. As a proximate and direct result of Defendants' unfair and deceptive
20 trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class
21 purchased or leased Class Vehicles and suffered an ascertainable loss and financial
22 harm. These ascertainable losses include, among other things, overpayment at the
23 time of purchase or lease, the cost to repair the Headlight Defect, replacement of
24 the damaged related system components, diminution of Class Vehicle resale value,
25 increased repair and maintenance costs, and other substantial monetary damages
26 and inconvenience.

27 210. As a direct and proximate result of Defendants' unfair or deceptive
28 acts or practices alleged herein, Minnesota Plaintiff and other members of the

1 Minnesota Sub-Class suffered and will continue to suffer actual damages and are
 2 entitled to recover actual damages to the extent permitted by law, including class
 3 action rules, in an amount to be proven at trial. In addition, Minnesota Plaintiff
 4 and the putative Class seek equitable and injunctive relief against Defendants on
 5 terms that the Court considers reasonable, and reasonable attorneys' fees.

6 211. Minnesota Plaintiff provided notice of his claims by letter dated
 7 December 1, 2022.

8 212. Pursuant to Minn. Stat. § 8.31(3a), Minnesota Plaintiff and the
 9 Minnesota Sub-Class Members seek damages in an amount to be proven at trial,
 10 including but not limited to actual damages and attorneys' fees, under the
 11 Minnesota CFA.

12 213. Minnesota Plaintiff and the Minnesota Sub-Class Members also seek
 13 punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing
 14 evidence that Defendants' acts show deliberate disregard for the rights or safety
 15 of others.

16 **FOURTH CAUSE OF ACTION**

17 **Breach of Express Warranty**

18 **Minn. Stat. §§ 336.2-313 and 336.2A-210**

19 **(On behalf of the Minnesota Sub-Class Against KMA and HMA)**

20 214. Plaintiffs incorporates by reference the allegations contained in the
 21 preceding paragraphs of this Complaint.

22 215. Minnesota Plaintiff brings this cause of action individually and on
 23 behalf of the members of the Minnesota Sub-Class against Defendants KMA and
 24 HMA (for the purposes of this claim, "Defendants").

25 216. Defendants are and were at all relevant times "merchants" with
 26 respect to motor vehicles under Minn. Stat. §§ 336.2-104(1) and "sellers" of motor
 27 vehicles under § 336.2-103(1)(d).

28 217. With respect to leases, Defendants are and were at all relevant times

1 “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

2 218. The Class Vehicles are and were at all relevant times “goods” within
3 the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

4 219. Defendants provided all purchasers and lessees of the Class Vehicles
5 with the express warranty described herein, which became a material part of the
6 bargain.

7 220. Defendants provided all purchasers and lessees of Kia-branded Class
8 Vehicles with the Kia Warranty and all purchasers and lessees of Hyundai-branded
9 Class Vehicles with the Hyundai Warranty.

10 221. Defendants sold and leased the Class Vehicles with a written express
11 warranty covering the Vehicles for six years or 60,000 miles, whichever comes
12 first (Kia Warranty), or five years or 60,000 miles, whichever comes first
13 (Hyundai Warranty).

14 222. Kia’s New Vehicle Limited Warranty expressly states that Kia
15 “warrants that it will arrange for an Authorized Kia dealer at locations of its choice
16 to provide for the repair of your vehicle if it fails to function properly during
17 normal use.” The warranty further provides that “Authorized service facilities will
18 remedy such failures to function properly at Kia’s expense[.]” (Kia Warranty).

19 223. Hyundai’s New Vehicle Limited Warranty expressly states that
20 Hyundai covers “repair or replacement of any component originally manufactured
21 or installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai Motor
22 Manufacturing Alabama, Kia Manufacturing Mexico, Kia Motors Manufacturing
23 Georgia or Hyundai Motor America that is found to be defective in material or
24 workmanship, under normal use and maintenance[.]” The warranty further
25 provides that “Warranty service will be provided by an authorized Hyundai
26 dealership without charge for parts or labor.” (Hyundai Warranty).

27 224. Defendants designed, manufactured and/or installed the Headlights
28 and the Headlights’ component parts in the Class Vehicles, and the Headlights and

1 their component parts are covered by the express Warranties.

2 225. The Headlight Defect at issue in this litigation was present at the time
3 the Class Vehicles were sold or leased to Minnesota Plaintiff and the Minnesota
4 Sub-Class Members.

5 226. Minnesota Plaintiff and the Minnesota Sub-Class Members relied on
6 Defendants' express warranties, which were a material part of the bargain, when
7 purchasing or leasing their Class Vehicles.

8 227. Under the express Warranties, Defendants were obligated to correct
9 the Headlight Defect in the vehicles owned or leased by Minnesota Plaintiff and
10 the Minnesota Sub-Class Members.

11 228. Although Defendants were obligated to correct the Headlight Defect,
12 none of the attempted fixes to the Headlights are adequate under the terms of the
13 Warranties, as they did not cure the defect.

14 229. Defendants breached the express Warranties by performing illusory
15 repairs. Rather than repairing the vehicles pursuant to the express Warranties,
16 Defendants falsely informed Minnesota Sub-Class Members that there was no
17 problem with their Class Vehicles, performed ineffective procedures, and/or
18 replaced defective components in the Headlights with equally defective
19 components, without actually repairing the Class Vehicles.

20 230. Defendants and their agent dealers have failed and refused to conform
21 the Headlights to the express Warranties. Defendants' conduct, as discussed
22 throughout this Complaint, has voided any attempt on their part to disclaim
23 liability for their actions.

24 231. Moreover, Defendants' attempt to disclaim or limit these express
25 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
26 circumstances here. Specifically, Defendants' warranty limitation is
27 unenforceable because it knowingly sold a defective product without informing
28 consumers about the defect.

1 232. The time limits contained in Defendants' warranty period were also
2 unconscionable and inadequate to protect Minnesota Plaintiff and the Minnesota
3 Sub-Class Members. Among other things, Minnesota Plaintiff and the Minnesota
4 Sub-Class Members had no meaningful choice in determining these time
5 limitations, the terms of which unreasonably favored Defendants. A gross
6 disparity in bargaining power existed between Defendants and the Class members,
7 and Defendants knew or should have known that the Class Vehicles were defective
8 at the time of sale.

9 233. Minnesota Plaintiff and the Minnesota Sub-Class Members have
10 complied with all obligations under the Warranties, or otherwise have been
11 excused from performance of said obligations as a result of Defendants' conduct
12 described herein.

13 234. Minnesota Plaintiff and the Minnesota Sub-Class Members were not
14 required to notify Defendants of the breach because affording Defendants a
15 reasonable opportunity to cure their breach of written warranty would have been
16 futile. Defendants were also on notice of the Headlight Defect from the complaints
17 and service requests they received from Plaintiffs and the Class Members, from
18 repairs and/or replacements of the Headlights or components thereof, and through
19 other internal and external sources.

20 235. Because Defendants, through their conduct and exemplified by their
21 own service bulletins, have covered repairs of the Headlight Defect if Defendants
22 determine the repairs are appropriately covered under the Warranties, Defendants
23 cannot now deny that the Warranties cover the Headlight Defect.

24 236. Because Defendants have not been able to remedy the Headlight
25 Defect, any limitation on remedies included in the Warranties causes the
26 Warranties to fail their essential purposes, rendering them null and void.

27 237. As a direct and proximate cause of Defendants' breach, Minnesota
28 Plaintiff and the Minnesota Sub-Class Members suffered damages and continue to

1 suffer damages, including economic damages at the point of sale or lease and
 2 diminution of value of their Class Vehicles. Additionally, Minnesota Plaintiff and
 3 the Minnesota Sub-Class Members have incurred or will incur economic damages
 4 at the point of repair in the form of the cost of repair.

5 238. As a direct and proximate result of Defendants' breach of express
 6 warranties, Minnesota Plaintiff and the Minnesota Sub-Class Members have been
 7 damaged in an amount to be determined at trial.

8 **FIFTH CAUSE OF ACTION**

9 **Breach of the Implied Warranty of Merchantability**

10 **Minn. Stat. §§ 336.2-314 and 336.2A-212**

11 **(On behalf of the Minnesota Sub-Class)**

12 239. Plaintiffs incorporates by reference the allegations contained in the
 13 preceding paragraphs of this Complaint.

14 240. Minnesota Plaintiff brings this cause of action individually and on
 15 behalf of the members of the Minnesota Sub-Class.

16 241. Defendants are and were at all relevant times "merchants" with
 17 respect to motor vehicles under Minn. Stat. §§ 336.2-104(1) and "sellers" of motor
 18 vehicles under § 336.2-103(1)(d).

19 242. With respect to leases, Defendants are and were at all relevant times
 20 "lessors" of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

21 243. The Class Vehicles are and were at all relevant times "goods" within
 22 the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

23 244. A warranty that the Class Vehicles were in merchantable condition
 24 and fit for the ordinary purpose for which vehicles are used is implied by law under
 25 Minn. Stat. §§ 336.2-314 and 336.2A-212.

26 245. Defendants knew or had reason to know of the specific use for which
 27 the Class Vehicles were purchased or leased. Defendants directly sold and
 28 marketed vehicles equipped with the Headlights to customers through authorized

1 dealers, like those from whom Minnesota Plaintiff and the Minnesota Sub-Class
2 Members bought or leased their vehicles, for the intended purpose of consumers
3 purchasing or leasing the vehicles. Defendants knew that the Class Vehicles would
4 and did pass unchanged from Defendants to the authorized dealers to Minnesota
5 Plaintiff and the Minnesota Sub-Class Members, with no modification to the
6 defective Headlights.

7 246. Defendants provided Plaintiffs and Class Members with an implied
8 warranty that the Class Vehicles and their components and parts are merchantable
9 and fit for the ordinary purposes for which they were sold.

10 247. This implied warranty included, among other things: (i) a warranty
11 that the Class Vehicles and their Headlights that were manufactured, supplied,
12 distributed, and/or sold by Defendants were safe and reliable for providing
13 transportation; and (ii) a warranty that the Class Vehicles and their Headlights
14 would be fit for their intended use while the Class Vehicles were being operated.

15 248. Contrary to the applicable implied warranties, the Class Vehicles and
16 their Headlights, at the time of sale and thereafter, were not fit for their ordinary
17 and intended purpose of providing Plaintiffs and Class Members with reliable,
18 durable, and safe transportation. Instead, the Class Vehicles are defective,
19 including, but not limited to, the defective design, installation, and manufacture of
20 their Headlights and the existence of the Headlight Defect at the time of sale or
21 lease and thereafter. Defendants knew of this defect at the time these sale or lease
22 transactions occurred.

23 249. As a result of Defendants' breach of the applicable implied
24 warranties, Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
25 an ascertainable loss of money, property, and/or value of their Class Vehicles.
26 Additionally, as a result of the Headlight Defect, Minnesota Plaintiff and the
27 Minnesota Sub-Class Members were harmed and suffered actual damages in that
28 the Class Vehicles' Headlight components are substantially certain to fail before

1 their expected useful life has run.

2 250. Defendants' actions, as complained of herein, breached the implied
3 warranty that the Class Vehicles were of merchantable quality and fit for such use
4 in violation of Minn. Stat. §§ 336.2-314 and 336.2A-212.

5 251. Minnesota Plaintiff and the Minnesota Sub-Class Members have
6 complied with all obligations under the warranty, or otherwise have been excused
7 from performance of said obligations as a result of Defendants' conduct described
8 herein.

9 252. Minnesota Plaintiff and the Minnesota Sub-Class Members were not
10 required to notify Defendants of the breach because affording Defendants a
11 reasonable opportunity to cure their breach of implied warranty would have been
12 futile. Defendants were also on notice of the Headlight Defect from the complaints
13 and service requests they received from Plaintiffs and the Class Members, from
14 repairs and/or replacements of the Headlights or components thereof, and through
15 other internal sources.

16 253. In addition, on or about December 1, 2022, Minnesota Plaintiff gave
17 notice to Defendants that he intended to pursue his warranty claims on behalf of a
18 class of similarly situated consumers.

19 254. Because Minnesota Plaintiff purchased his vehicle from an authorized
20 Defendants dealer, he is in privity with Defendants since, (1) an agency
21 relationship establishes privity for purposes of the breach of implied warranty
22 claims, and (2) privity is not required where plaintiffs are intended third-party
23 beneficiaries of a defendant's implied warranties and the contracts between
24 Defendants and their authorized dealers.

25 255. As a direct and proximate cause of Defendants' breach, Minnesota
26 Plaintiff and the Minnesota Sub-Class Members suffered damages and continue to
27 suffer damages, including economic damages at the point of sale or lease and
28 diminution of value of their Class Vehicles. Additionally, Minnesota Plaintiff and

1 the Minnesota Sub-Class Members have incurred or will incur economic damages
2 at the point of repair in the form of the cost of repair.

3 256. As a direct and proximate result of Defendants' breach of the implied
4 warranty of merchantability, Minnesota Plaintiff and the Minnesota Sub-Class
5 Members have been damaged in an amount to be proven at trial.

6 **SIXTH CAUSE OF ACTION**

7 **Violation Of The South Carolina Unfair Trade Practices Act**

8 **S.C. Code Ann. § 39-5-10, *et seq.***

9 **(On behalf of the South Carolina Sub-Class)**

10 257. Plaintiffs incorporates by reference the allegations contained in the
11 preceding paragraphs of this Complaint.

12 258. Plaintiff Robert Ewing ("South Carolina Plaintiff") brings this cause
13 of action on his own behalf and on behalf of the members of the South Carolina
14 Sub-Class.

15 259. Defendants are "persons" under S.C. Code Ann. § 39-5-10.

16 260. The South Carolina Unfair Trade Practices Act ("South Carolina
17 UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade
18 or commerce." S.C. Code Ann. § § 39-5-20(a). Defendants' conduct and acts were
19 offensive to public policy or immoral, unethical, or oppressive, thus unfair; indeed,
20 to manufacture, distribute, and promote the Class Vehicles with a Defect known
21 to cause failure while the Class Vehicle is in motion is surely detrimental to the
22 public at large. Defendants' unfair or deceptive acts or practices were prohibited
23 by the South Carolina UTPA.

24 261. Defendants participated in unfair or deceptive trade practices that
25 violated the South Carolina UTPA as described below and alleged throughout the
26 Complaint. By failing to disclose the Defect, by concealing the Defect, by
27 marketing its vehicles as safe, reliable, easily operable, efficient, and of high
28 quality, and by presenting itself as reputable manufacturers that valued safety,

1 cleanliness, performance and efficiency, and stood behind its vehicles after they
2 were sold, Defendants knowingly and intentionally misrepresented and omitted
3 material facts in connection with the sale or lease of the Class Vehicles.
4 Defendants systematically misrepresented, concealed, suppressed, or omitted
5 material facts relating to the Class Vehicles and Defect in the course of its
6 business.

7 262. Defendants also engaged in unlawful trade practices by employing
8 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
9 suppression, or omission of any material fact with intent that others rely upon such
10 concealment, suppression or omission, in connection with the sale of the Class
11 Vehicles.

12 263. Defendants' unfair and deceptive acts or practices occurred
13 repeatedly in Defendants' trade or business, were capable of deceiving a
14 substantial portion of the purchasing public and imposed a serious safety risk on
15 the public.

16 264. Defendants knew that the Class Vehicles and their Headlights
17 suffered from an inherent defect, were defectively designed or manufactured, and
18 were not suitable for their intended use.

19 265. Defendants knew or should have known that their conduct violated
20 the South Carolina UTPA.

21 266. South Carolina Plaintiff and the South Carolina Sub-Class Members
22 reasonably relied on Defendants' misrepresentations and omissions of material
23 facts in its advertisements of the Class Vehicles and in the purchase of the Class
24 Vehicles.

25 267. Had South Carolina Plaintiff and the South Carolina Sub-Class
26 Members known that the Class Vehicles would exhibit the Defect, they would not
27 have purchased or leased the Class Vehicles or would have paid less for them.
28 Plaintiffs did not receive the benefit of their bargain as a result of Defendants'

1 misconduct.

2 268. Defendants owed South Carolina Plaintiff and the South Carolina
3 Sub-Class Members a duty to disclose the truth about the Defect because
4 Defendants: (a) possessed exclusive knowledge of the design of the Class Vehicles
5 and the Defect; (b) intentionally concealed the foregoing from South Carolina
6 Plaintiff and the South Carolina Sub-Class Members; and/or (c) made incomplete
7 representations regarding the quality and durability of the Class Vehicles, while
8 purposefully withholding material facts from South Carolina Plaintiff and the
9 South Carolina Sub-Class Members that contradicted these representations.

10 269. Due to Defendants' specific and superior knowledge that the
11 Headlights in the Class Vehicles will fail due to the Defect, its false representations
12 regarding the increased durability of the Class Vehicles, and reliance by South
13 Carolina Plaintiff and the South Carolina Sub-Class Members on these material
14 representations, Defendants had a duty to disclose to Class members that the Class
15 Vehicles' Headlights will fail, that Class Vehicles do not have the expected
16 durability, reliability, and/or safety over other vehicles, and that Class members
17 would be required to bear the cost of the Defect in their vehicles. Having
18 volunteered to provide information to South Carolina Plaintiff and the South
19 Carolina Sub-Class Members, Defendants had the duty to disclose not just the
20 partial truth, but the entire truth. These omitted and concealed facts were material
21 because they directly impact the value of the Class Vehicles purchased or leased
22 by South Carolina Plaintiff and the South Carolina Sub-Class Members.
23 Longevity, durability, performance, and safety are material concerns to
24 Defendants' consumers. Defendants represented to South Carolina Plaintiff and
25 the South Carolina Sub-Class Members that they were purchasing or leasing
26 vehicles that were durable, reliable, safe, efficient, of high quality, and containing
27 safe Headlights as alleged throughout this Complaint, when in fact it is only a
28 matter of time before the Headlights fail due to the Defect.

1 270. South Carolina Plaintiff and the South Carolina Sub-Class Members
2 suffered injury in fact to a legally protected interest. As a result of Defendants'
3 conduct, South Carolina Plaintiff and the South Carolina Sub-Class Members were
4 harmed and suffered actual damages in the form of the diminished value of their
5 vehicles.

6 271. As a result of Defendants' conduct, South Carolina Plaintiff and the
7 South Carolina Sub-Class Members were harmed and suffered actual damages as
8 a result of Defendants' misrepresentations and omissions with regard to their Class
9 Vehicles' Headlights because they purchased vehicles which do not perform as
10 advertised.

11 272. As a direct and proximate result of Defendants' unfair or deceptive
12 acts or practices, South Carolina Plaintiff and the South Carolina Sub-Class
13 Members suffered and will continue to suffer injury in fact and/or actual damages.

14 273. Defendants' violations present a continuing risk to South Carolina
15 Plaintiff and the South Carolina Sub-Class Members as well as to the general
16 public. Defendants' unlawful acts and practices complained of herein affect the
17 public interest. Specifically: (1) the number of consumers affected by Defendants'
18 deceptive practices are in the hundreds of thousands nation-wide; (2) Defendants
19 have significantly high sophistication and bargaining power with respect to the
20 manufacture and sale of the Class Vehicles to Plaintiffs and individual Class
21 members; and (3) so long as the Class Vehicles continue to be sold and distributed
22 with the defective Headlights, the likelihood of continued impact on other
23 consumers is significant.

24 274. Pursuant to S.C. Code Ann. § 39-5-140(a), South Carolina Plaintiff
25 and the South Carolina Sub-Class Members seek monetary relief against
26 Defendant to recover for economic losses, reasonable attorney's fees, and costs.
27 Because Defendants' actions were willful and knowing, Plaintiffs' damages
28 should be trebled.

275. South Carolina Plaintiff and the South Carolina Sub-Class Members further allege that Defendant's malicious and deliberate conduct warrants an assessment of punitive damages because Defendant carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiffs and the Class to cruel and unjust hardship as a result.

SEVENTH CAUSE OF ACTION

Breach of Express Warranty

S.C. Code Ann. §§ 36-2-313 and 36-2A-210

(On Behalf of the South Carolina Sub-Class)

276. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

277. South Carolina Plaintiff brings this cause of action on his own behalf and on behalf of the members of the South Carolina Sub-Class.

278. Defendants are and were at all relevant times "merchants" with respect to motor vehicles under S.C. Code Ann. §§ 36-2-104(1) and 36-2A-103(1)(t), and "sellers" of motor vehicles under § 36-2-103(1)(d).

279. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under S.C. Code Ann. § § 36-2A-103(1)(p).

280. The Class Vehicles are and were at all relevant times "goods" within the meaning of S.C. Code Ann. § §§ 36-2-105(1) and 36-2A-103(1)(h).

281. Defendants provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain.

282. Defendants provided all purchasers and lessees of Kia-branded Class Vehicles with the Kia Warranty and all purchasers and lessees of Hyundai-branded Class Vehicles with the Hyundai Warranty.

283. Defendants sold and leased the Class Vehicles with a written express warranty covering the Vehicles for six years or 60,000 miles, whichever comes

1 first (Kia Warranty), or five years or 60,000 miles, whichever comes first
2 (Hyundai Warranty).

3 284. Kia's New Vehicle Limited Warranty expressly states that Kia
4 "warrants that it will arrange for an Authorized Kia dealer at locations of its choice
5 to provide for the repair of your vehicle if it fails to function properly during
6 normal use." The warranty further provides that "Authorized service facilities will
7 remedy such failures to function properly at Kia's expense[.]" (Kia Warranty).

8 285. Hyundai's New Vehicle Limited Warranty expressly states that
9 Hyundai covers "repair or replacement of any component originally manufactured
10 or installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai Motor
11 Manufacturing Alabama, Kia Manufacturing Mexico, Kia Motors Manufacturing
12 Georgia or Hyundai Motor America that is found to be defective in material or
13 workmanship, under normal use and maintenance[.]" The warranty further
14 provides that "Warranty service will be provided by an authorized Hyundai
15 dealership without charge for parts or labor." (Hyundai Warranty).

16 286. Defendants designed, manufactured and/or installed the Headlights
17 and the Headlights' component parts in the Class Vehicles, and the Headlights and
18 their component parts are covered by the express Warranties.

19 287. The Defect at issue in this litigation was present at the time the Class
20 Vehicles were sold or leased to South Carolina Plaintiff and the South Carolina
21 Sub-Class Members.

22 288. Plaintiffs relied on Defendants' express warranties, which were a
23 material part of the bargain, when purchasing or leasing their Class Vehicles.

24 289. Under the express Warranties, Defendants were obligated to correct
25 the Defect in the vehicles owned or leased by South Carolina Plaintiff and the
26 South Carolina Sub-Class Members.

27 290. Although Defendants were obligated to correct the Defect, none of
28 the attempted fixes to the Headlights are adequate under the terms of the

1 Warranties, as they did not cure the defect.

2 291. Defendants breached the express Warranties by performing illusory
3 repairs. Rather than repairing the vehicles pursuant to the express Warranties,
4 Defendants falsely informed South Carolina Sub-Class Members that there was no
5 problem with their Class Vehicles, performed ineffective procedures, and/or
6 replaced defective components in the Headlight Assembly with equally defective
7 components, without actually repairing the Class Vehicles.

8 292. Defendants and their agent dealers have failed and refused to conform
9 the Headlights to the express Warranties. Defendants' conduct, as discussed
10 throughout this Complaint, has voided any attempt on its part to disclaim liability
11 for their actions.

12 293. Moreover, Defendants' attempt to disclaim or limit these express
13 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
14 circumstances here. Specifically, Defendants' warranty limitation is
15 unenforceable because it knowingly sold a defective product without informing
16 consumers about the defect.

17 294. The time limits contained in Defendants' warranty period were also
18 unconscionable and inadequate to protect South Carolina Plaintiff and the South
19 Carolina Sub-Class Members. Among other things, South Carolina Plaintiff and
20 the South Carolina Sub-Class Members had no meaningful choice in determining
21 these time limitations, the terms of which unreasonably favored Defendants. A
22 gross disparity in bargaining power existed between Defendants and the Class
23 members, and Defendants knew or should have known that the Class Vehicles
24 were defective at the time of sale.

25 295. South Carolina Plaintiff and the South Carolina Sub-Class Members
26 have complied with all obligations under the Warranties, or otherwise have been
27 excused from performance of said obligations as a result of Defendants' conduct
28 described herein.

1 Complaint.

2 302. South Carolina Plaintiff brings this cause of action on his own behalf
3 and on behalf of the members of the South Carolina Sub-Class.

4 303. Defendants are and were at all relevant times “merchants” with
5 respect to motor vehicles under S.C. Code Ann. § §§ 36-2-104(1) and 36-2A-
6 103(1)(t), and “sellers” of motor vehicles under § 36-2-103(1)(d).

7 304. With respect to leases, Defendants are and were at all relevant times
8 “lessors” of motor vehicles under S.C. Code Ann. § § 36-2A-103(1)(p).

9 305. The Class Vehicles are and were at all relevant times “goods” within
10 the meaning of S.C. Code Ann. § §§ 36-2-105(1) and 36-2A-103(1)(h).

11 306. A warranty that the Class Vehicles were in merchantable condition
12 and fit for the ordinary purpose for which vehicles are used is implied by law under
13 S.C. Code Ann. § §§ 36-2-314 and 36-2A-212.

14 307. Defendants knew or had reason to know of the specific use for which
15 the Class Vehicles were purchased or leased. Defendants directly sold and
16 marketed vehicles equipped with Headlights to customers through authorized
17 dealers, like those from whom South Carolina Plaintiff and the South Carolina
18 Sub-Class Members bought or leased their vehicles, for the intended purpose of
19 consumers purchasing the vehicles. Defendants knew that the Class Vehicles
20 would and did pass unchanged from the authorized dealers to South Carolina
21 Plaintiff and the South Carolina Sub-Class Members, with no modification to the
22 defective Headlights.

23 308. Defendants provided Plaintiffs and Class Members with an implied
24 warranty that the Class Vehicles and their components and parts are merchantable
25 and fit for the ordinary purposes for which they were sold.

26 309. This implied warranty included, among other things: (i) a warranty
27 that the Class Vehicles and their Headlights that were manufactured, supplied,
28 distributed, and/or sold by Defendants were safe and reliable for providing

1 transportation; and (ii) a warranty that the Class Vehicles and their Headlights
2 would be fit for their intended use while the Class Vehicles were being operated.

3 310. Contrary to the applicable implied warranties, the Class Vehicles and
4 their Headlights at the time of sale and thereafter were not fit for their ordinary
5 and intended purpose of providing Plaintiffs and Class Members with reliable,
6 durable, and safe transportation. Instead, the Class Vehicles are defective,
7 including, but not limited to, the defective design and manufacture of their
8 Headlights and the existence of the Defect at the time of sale or lease and
9 thereafter. Defendants knew of this defect at the time these sale or lease
10 transactions occurred.

11 311. As a result of Defendants' breach of the applicable implied
12 warranties, South Carolina Plaintiff and the South Carolina Sub-Class Members
13 of the Class Vehicles suffered an ascertainable loss of money, property, and/or
14 value of their Class Vehicles. Additionally, as a result of the Defect, South
15 Carolina Plaintiff and the South Carolina Sub-Class Members were harmed and
16 suffered actual damages in that the Class Vehicles' Headlights are substantially
17 certain to fail before their expected useful life has run.

18 312. Defendants' actions, as complained of herein, breached the implied
19 warranty that the Class Vehicles were of merchantable quality and fit for such use
20 in violation of S.C. Code Ann. § §§ 36-2-314 and 36-2A-212.

21 313. South Carolina Plaintiff and the South Carolina Sub-Class Members
22 have complied with all obligations under the warranty, or otherwise have been
23 excused from performance of said obligations as a result of Defendants' conduct
24 described herein.

25 314. South Carolina Plaintiff and the South Carolina Sub-Class Members
26 were not required to notify Defendants of the breach because affording Defendants
27 a reasonable opportunity to cure their breach of written warranty would have been
28 futile. Defendants were also on notice of the Defect from the complaints and

1 service requests it received from Plaintiffs and the Class Members, from repairs
2 and/or replacements of the Headlights or components thereof, and through other
3 internal sources.

4 315. As a direct and proximate cause of Defendants' breach, South
5 Carolina Plaintiff and the South Carolina Sub-Class Members suffered damages
6 and continue to suffer damages, including economic damages at the point of sale
7 or lease and diminution of value of their Class Vehicles. Additionally, South
8 Carolina Plaintiff and the South Carolina Sub-Class Members have incurred or
9 will incur economic damages at the point of repair in the form of the cost of repair.

10 316. As a direct and proximate result of Defendants' breach of the implied
11 warranty of merchantability, South Carolina Plaintiff and the South Carolina Sub-
12 Class Members have been damaged in an amount to be proven at trial.

13 **NINTH CAUSE OF ACTION**

14 **(Breach of Express Warranty under the Magnuson-Moss Warranty Act,**
15 **15 U.S.C. § 2303 *et seq.*)**

16 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
17 **Sub-Classes Against Defendants)**

18 317. Plaintiffs incorporate by reference the allegations contained in the
19 preceding paragraphs of this Complaint.

20 318. Plaintiffs bring this cause of action on behalf of himself and on behalf
21 of the Class against Defendants.

22 319. Defendants provided all purchasers and lessees of the Class Vehicles
23 with an express warranty described *infra*, which became a material part of the
24 bargain.

25 320. The Headlight assembly and its component parts were manufactured
26 and/or installed in the Class Vehicles by Defendants and are covered by the
27 express warranty.

28 321. In a section entitled "New Vehicle Limited Warranty," Kia's express

1 warranty provides, in relevant part, that Kia “warrants that it will arrange for an
2 Authorized Kia dealer at locations of its choice to provide for the repair of your
3 vehicle if it fails to function properly during normal use.” The warranty further
4 provides that “Authorized service facilities will remedy such failures to function
5 properly at Kia’s expense[.]” (Kia Warranty).

6 322. In a section entitled “New Vehicle Limited Warranty,” Hyundai’s
7 express warranty provides, in relevant part, that Hyundai covers “repair or
8 replacement of any component originally manufactured or installed by Hyundai
9 Motor Company, Hyundai Motor Group, Hyundai Motor Manufacturing Alabama,
10 Kia Manufacturing Mexico, Kia Motors Manufacturing Georgia or Hyundai
11 Motor America that is found to be defective in material or workmanship, under
12 normal use and maintenance[.]” The warranty further provides that “Warranty
13 service will be provided by an authorized Hyundai dealership without charge for
14 parts or labor.” (Hyundai Warranty).

15 323. Defendants breached the express warranties by selling and leasing
16 Class Vehicles with Headlights that were defective, requiring repair or
17 replacement within the warranty period, and refusing to honor the express
18 warranty by repairing or replacing, free of charge, the Headlight and its component
19 parts. Defendants have failed to “repair” the defects as alleged herein.

20 324. Plaintiffs was not required to notify Defendants of the breach or was
21 not required to do so because affording Defendants a reasonable opportunity to
22 cure its breach of written warranty would have been futile. Defendants were also
23 on notice of the defect from complaints and service requests they received from
24 Class Members, from repairs and/or replacements of the Headlight, and from other
25 internal sources.

26 325. Plaintiffs also provided notice to Defendants of their breach of
27 warranty claims under the MMWA by letters dated December 1, 2022 (Plaintiff
28 Maranda) and December 2, 2022 (Plaintiff Ewing).

1 326. As a direct and proximate cause of Defendants’ breach, Plaintiffs and
 2 the other Class members have suffered, and continue to suffer, damages, including
 3 economic damages at the point of sale or lease. Additionally, Plaintiffs and the
 4 other Class members have incurred or will incur economic damages at the point
 5 of repair in the form of the cost of repair.

6 327. Plaintiffs and the other Class members are entitled to legal and
 7 equitable relief against Defendants, including actual damages, consequential
 8 damages, specific performance, attorneys’ fees, costs of suit, and other relief as
 9 appropriate.

10 **TENTH CAUSE OF ACTION**

11 **(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,**
 12 **15 U.S.C. § 2303 *et seq.*)**

13 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
 14 **Sub-Classes Against Defendants)**

15 328. Plaintiffs incorporate by reference the allegations contained in the
 16 preceding paragraphs of this Complaint.

17 329. Plaintiffs bring this cause of action on behalf of themselves and the
 18 Class against Defendants.

19 330. The Class Vehicles are a “consumer product” within the meaning of
 20 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

21 331. Plaintiffs and Class Members are “consumers” within the meaning of
 22 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

23 332. Defendants are “suppliers” and “warrantors” within the meaning of
 24 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

25 333. Defendants impliedly warranted that the Class Vehicles were of
 26 merchantable quality and fit for use. This implied warranty included, among other
 27 things: (i) a warranty that the Class Vehicles and their Headlights manufactured,
 28 supplied, distributed, and/or sold by Defendants would provide safe and reliable

1 transportation; and (ii) a warranty that the Class Vehicles and their Headlights
2 would be fit for their intended use while the Class Vehicles were being operated.

3 334. Contrary to the applicable implied warranties, the Class Vehicles and
4 their Headlights at the time of sale and thereafter were not fit for their ordinary
5 and intended purpose of providing Plaintiffs and Class members with reliable,
6 durable, and safe transportation. Instead, the Class Vehicles are defective,
7 including the defective design and materials of their Headlights.

8 335. Defendants' breach of implied warranties has deprived Plaintiffs and
9 Class members of the benefit of their bargain.

10 336. The amount in controversy of Plaintiffs' individual claims meets or
11 exceeds the sum or value of \$25,000. In addition, the amount in controversy meets
12 or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed
13 on the basis of all claims to be determined in this suit.

14 337. Defendants have been afforded a reasonable opportunity to cure their
15 breach, including when Plaintiffs and Class members brought their vehicles in for
16 diagnoses and Headlight repair.

17 338. As a direct and proximate cause of Defendants' breach of implied
18 warranties, Plaintiffs and Class members sustained and incurred damages and
19 other losses in an amount to be determined at trial. Defendants' conduct damaged
20 Plaintiffs and Class members, who are entitled to recover actual damages,
21 consequential damages, specific performance, diminution in value, costs,
22 attorneys' fees, and/or other relief as appropriate.

23 339. As a result of Defendants' violations of the Magnuson-Moss
24 Warranty Act as alleged herein, Plaintiffs and Class members have incurred
25 damages.

26 340. Plaintiffs also provided notice to Defendants of its breach of warranty
27 claims under the MMWA by letters dated December 1, 2022 (Plaintiff Maranda)
28 and December 2, 2022 (Plaintiff Ewing).

ELEVENTH CAUSE OF ACTION

(For Fraud by Omission or Fraudulent Concealment)

(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All Sub-Classes Against Defendants)

341. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

342. Plaintiffs bring this cause of action on behalf of themselves and the Class or, alternatively, on behalf of all Sub-Classes against Defendants.

343. Defendants knew that the Class Vehicles suffered from an inherent Headlight Defect, were defectively designed and/or manufactured, and were not suitable for their intended use.

344. Defendants concealed from and failed to disclose to Plaintiffs and Class Members the defective nature of the Class Vehicles.

345. Defendants were under a duty to Plaintiffs and Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendants were in a superior position to know the true state of facts about the safety defect contained in the Class Vehicles;
- b. The omitted facts were material because they directly impact the safety of the Class Vehicles;
- c. Defendants knew the omitted facts regarding the Headlight Defect were not known to or reasonably discoverable by Plaintiffs and Class Members;
- d. Defendants made partial disclosures about the quality of the Class Vehicles without revealing their true defective nature; and,
- e. Defendants actively concealed the defective nature of the Class Vehicles from Plaintiffs and Class Members.

346. The facts concealed or not disclosed by Defendants to Plaintiffs and the other Class Members are material in that a reasonable person would have

1 considered them to be important in deciding whether to purchase or lease
2 Defendants' Class Vehicles or pay a lesser price for them. Whether a vehicle's
3 Headlight is defective, which can suddenly cause lights to fail, dim, or malfunction
4 during night driving or inclement weather, thereby causing the inability to see
5 pedestrians, animals, and road hazards, is a material safety concern. Had Plaintiffs
6 and Class Members known about the defective nature of the Class Vehicles, they
7 would not have purchased or leased the Class Vehicles or would have paid less for
8 them.

9 347. Defendants concealed or failed to disclose the true nature of the
10 design and/or manufacturing defects contained in the Class Vehicles to induce
11 Plaintiffs and Class Members to act thereon. Plaintiffs and the other Class
12 Members justifiably relied on Defendant's omissions to their detriment. This
13 detriment is evident from Plaintiffs and Class Members' purchase or lease of
14 Defendants' defective Class Vehicles.

15 348. Defendants continued to conceal the defective nature of the Class
16 Vehicles even after Class Members began to report the problems. Indeed,
17 Defendants continue to cover up and conceal the true nature of the problem today.

18 349. As a direct and proximate result of Defendants' misconduct, Plaintiffs
19 and Class Members have suffered and will continue to suffer actual damages.
20 Plaintiffs and the Class reserve their right to elect either to (a) rescind their
21 purchase or lease of the defective Vehicles and obtain restitution or (b) affirm their
22 purchase or lease of the defective Vehicles and recover damages.

23 350. Defendants' acts were done maliciously, oppressively, deliberately,
24 with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights
25 and well-being to enrich Defendants. Defendants' conduct warrants an assessment
26 of punitive damages in an amount sufficient to deter such conduct in the future,
27 which amount is to be determined according to proof
28

TWELFTH CAUSE OF ACTION

(For Unjust Enrichment)

(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All Sub-Classes Against Defendants)

351. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

352. Plaintiffs bring this cause of action on behalf of themselves and the Class or, alternatively, on behalf of all Sub-Classes against Defendants.

353. Defendants have received and retained a benefit from Plaintiffs and the members of the Class, and inequity has resulted.

354. As a direct and proximate result of Defendants' failure to disclose known defects, Defendants have profited through the sale and lease of the Class Vehicles, the value of which was artificially inflated by Defendants' concealment of and omissions regarding the Headlight Defect. Defendants charged higher prices for the vehicles than the vehicles' true value, and Plaintiffs and Class Members thus overpaid for the Class Vehicles. Although these vehicles are purchased through Defendants' authorized dealers and distributors, the money from the vehicle sales flows directly back to Defendants.

355. Additionally, as a direct and proximate result of Defendants' failure to disclose known defects in the Class Vehicles, Plaintiffs and Class Members have vehicles that require repeated, high-cost repairs that can and therefore have conferred an unjust substantial benefit upon Defendants.

356. Defendants have been unjustly enriched due to the known defects in the Class Vehicles through the use of money paid that earned interest or otherwise added to Defendants' profits when said money should have remained with Plaintiffs and Class Members.

357. Plaintiffs and Class Members were not aware of the true facts regarding the Defect in the Class Vehicles and did not benefit from Defendants'

1 unjust conduct.

2 358. As a result of the Defendants' unjust enrichment, Plaintiffs and Class
3 Members have suffered damages.

4 359. Plaintiffs do not seek restitution under their unjust enrichment claim.
5 Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the
6 financial profits that Defendants obtained as a result of its unjust conduct.

7 360. Additionally, Plaintiffs seek injunctive relief to compel Defendants
8 to offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs
9 also seek injunctive relief enjoining Defendants from further deceptive
10 distribution, sales, and lease practices with respect to Class Vehicles, enjoining
11 Defendants from selling the Class Vehicles with the misleading information;
12 compelling Defendants to provide Class members with a replacement components
13 that do not contain the defects alleged herein; and/or compelling Defendants to
14 reform their warranties, in a manner deemed to be appropriate by the Court, to
15 cover the injury alleged and to notify all Class Members that such warranties have
16 been reformed. Money damages are not an adequate remedy for the above
17 requested non-monetary injunctive relief.

18 **RELIEF REQUESTED**

19 361. Plaintiffs, on behalf of themselves and all others similarly situated,
20 request the Court enter judgment against Defendants, as follows:

- 21 (a) An order certifying the proposed Class and Sub-Classes,
22 designating Plaintiffs as named representatives of the Class, and
23 designating the undersigned as Class Counsel;
- 24 (b) A declaration that Defendants are financially responsible for
25 notifying all Class Members about the defective nature of the
26 Headlight, including the need for periodic maintenance;
- 27 (c) An order enjoining Defendants from further deceptive
28 distribution, sales, and lease practices with respect to Class

1 Vehicles; compelling Defendants to issue a voluntary recall for
2 the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling
3 Defendants to repair and eliminate the Headlight Defect from
4 every Class Vehicle; enjoining Defendants from selling the Class
5 Vehicles with the misleading information; and/or compelling
6 Defendants to reform its warranty, in a manner deemed to be
7 appropriate by the Court, to cover the injury alleged and to notify
8 all Class Members that such warranty has been reformed;

9 (d) An award to Plaintiffs and the Class for compensatory,
10 exemplary, and statutory damages, including interest, in an
11 amount to be proven at trial;

12 (e) Any and all remedies provided pursuant to the Magnuson-Moss
13 Warranty Act;

14 (f) A declaration that Defendants must disgorge, for the benefit of
15 the Class, all or part of the ill-gotten profits it received from the
16 sale or lease of the Class Vehicles or make full restitution to
17 Plaintiffs and Class Members;

18 (g) An award of attorneys' fees and costs, as allowed by law;

19 (h) An award of pre-judgment and post-judgment interest, as
20 provided by law;

21 (i) Leave to amend the Complaint to conform to the evidence
22 produced at trial; and

23 (j) Such other relief as may be appropriate under the circumstances.

24 **DEMAND FOR JURY TRIAL**

25 362. Pursuant to Federal Rule of Civil Procedure 38(b) and Central District
26 of California Local Rule 38-1, Plaintiffs hereby demand a trial by jury of all issues
27 in this action so triable.
28

1 Dated: December 6, 2022

Respectfully submitted,

2 **Capstone Law APC**

3
4 By: /s/ Tarek H. Zohdy

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